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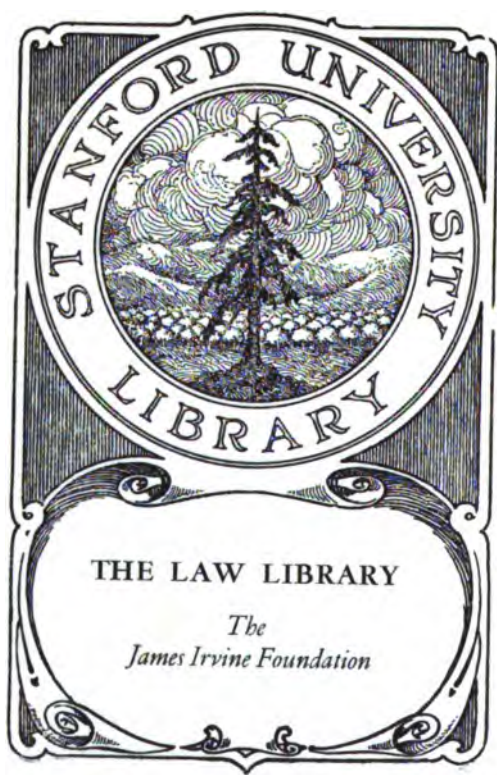
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TO THE PRESENT TIME;

AS WELL AS AN
INDEX of REFERENCE to all the ANCIENT and
MODERN ENTRIES extant.

By JOHN WENTWORTH, Esq.
OF THE INNER TEMPLE, BARRISTER AT LAW.

*Ne quæ Studio dispôsta fidei
Intellecta priusquam sint contempta relinquas.* LUCRET.

V O L. II.
CONTAINING
ASSUMPSIT SPECIAL.

L O N D O N :
PRINTED FOR G. G. AND J. ROBINSON, PATERNOSTER-ROW.

1797.



THE Profession will please to observe, that this Volume contains the Head of ASSUMPSIT with the INDEX complete, except the Pleas; although the Precedents of the *Considerations not Classed*, on *Common Promises*, &c. and the Pleas in *Assumpsit*, with the INDEX to Pleas in *Assumpsit*, are postponed to make part of the Third Volume, for the convenience of the Profession, to keep the *Pleas and INDEX to Pleas* distinct; which Volume will also contain the Head of *Covenant* and INDEX to *Covenant* complete.

THIS has been done in order to afford the Students and Practitioners the addition of the Form of a Count or Declaration in *Assumpsit* on *Common Promises* and by and against particular Persons in every possible way that may occur in Practice; which, by perusing the INDEX and the ANALYSIS, I trust it will be thought I have well done; for I have in the INDEX separated all the Forms, by and against particular Persons, in *Indebitatus* or *General Assumpsit*, from the Declarations on *Common Promises* made by any person, for the ease too and convenience of the Practitioner. *Ex. gr.* for *Fees*, *Fines on Admission to Copyholds*, &c.; an action for the former would be brought

brought by Attornies, Proctors, &c. and for the latter by a Lord of a Manor ; therefore, the slightest attention to the ANALYSIS and the INDEX will shew, that the object of the action is *by or against some particular Person* under that Head ; and, referring to the precedent, the Title at the Top of the page points it out, as in the instances given, viz. for *Fees, Fines, &c.*

I MUST apprize the Profession again, as I did in the First Volume, that I have added these common Forms at the pressing request of many of the junior part of the Profession, the Students and Practitioners, for the use of Pupils ; and that this is the reason why I have not been able to give the *whole* of *Assumpsit*, as I had originally intended to do, it will be observed, however, that the INDEX complete, except to Pleas, which I thought useful to give with the Pleas a-part, is contained in this Volume.

STEADILY pursuing my original Plan, I have endeavoured to arrange my matter according to the subject or object of the Action, relating to Trade, Agriculture, Bailments, the relation of Master and Servant (under *Services Done, &c.—to Render Services, Perform Works—Serve and Employ*), as in the ANALYSIS ; and have given every Count on the various *Losses* on a *Policy of Assurance*, in the First ; *Breaches of an Agreement* between a *Landlord* and his *Tenant*, in the Second ; and on *Common Promises*, in the Third Volume ; without the formal Beginning and Ending of a Declaration, in the manner of *Rastall's Entries* : For, by reference to the formal *Beginnings and Endings of*
Decla-

Declarations, &c. the Pleader will find the exact Form in the superior and inferior Courts. On this account I do not purpose to give the Beginning of every Declaration so frequently as I have hitherto done.

I HAVE selected such Titles as are important subjects of an Action, under the *Considerations not Classed*, in the Third Volume (as in the First), where there is no special Agreement, although the Action is emphatically *Indebitatus Assumpsit*, in the way I consider this Action distinguished from *Assumpsit Special*—as on Bye Laws—Actions for Penalties given by *Statute*, where there has been an Agreement; for instance, relating to Workmen hiring themselves out to other Masters, in particular Trades, p. 511.—*Assumpsit* on Statutes, where the *Assumpsit* or Duty is implied, and the Defendant under a legal Obligation to perform or do a thing, as to *contribute to the expence of a Party Wall*—Apprentices Fees—Articled Clerks *. In all these cases I have constantly placed the Title or Subject of the Action at the top of the page in every Volume, and faithfully indexed the whole, that no difficulty (I think I may venture to say) can possibly arise in turning to the exact Precedent wanted.

In many of the Precedents the Student will remark, that *the said plaintiff* and *the said defendant*, and *plaintiff* and *defendant*, are used in abridging the copy, instead of *the said Thomas* or *the said William*. I scarcely need remind, that the names of the parties should be substituted; and this is the only error I feel in the body of

* See Vol. III. p. 20. a very good Opinion on such Agreements, when to declare generally and when specially.

any Precedent hitherto, which arises from the most scrupulous fear of altering any thing, except a literal error, in the Precedents I publish ; in a Work of this sort, I think it becomes me not to do it,

THE Errors of the Press, however, will be added at the end of ASSUMPSIT, in the Third Volume ; together with a GLOSSARY of the REPORTERS and ENTRIES, in the manner of *Repertorium Juridicum*,

I CANNOT refrain to assure the Profession, and gratify my own vanity ; for I am indeed vain in the commendations bestowed upon the Plan and Execution of my First Volume, and the INDEX to it, communicated to me from the most judicious Special Pleaders at the English Bar. One instance (a far higher authority), from the manner in which it was done, and the occasion of doing it, demands from me the gratitude and respect, due to so much sensibility, and a mind to enlightened, till the latest moment of my life.

J. WENTWORTH.

INNER TEMPLE, 3^d May, 1797.

ASSUMPSIT SPECIAL.

ON SPECIAL CONTRACTS,

RELATING TO

REAL AND PERSONAL PROPERTY CONCERNING
LANDS, HOUSES, &c.

BY AND AGAINST LANDLORD AND TENANT; &c.

HERTFORDSHIRE, to wit. John Chethyre esquire complains of Benjamin Allen, being, &c. for that whereas the said John on the twenty-ninth day of September in the year of Our Lord 1786, at the parish of Bennington, in the said county, at the request of the said Benjamin, demised, set, and let to farm to the said B. a certain messuage, tenement, or farm house, and also a certain park called Bennington Park, and divers, to wit, three hundred acres of other land, with the appurtenances, situate, lying, and being in the parish of Bennington, in the county of H. aforesaid, to hold the same premises, with the appurtenances, to the said B. his executors, administrators and assigns, for the space of one whole year thence next ensuing, and fully to be complete and ended, and so from year to year, for so long time as it should please the said J. and the said B. at a certain rent therefore, payable by the said B. to the said J. ; and in consideration thereof, he the said B. afterwards, to wit, on, &c. aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said J. to use the said premises in a good husbandlike manner during the time that he should hold and enjoy the same as tenant thereof to the said J. : and the said J. in fact says, that the said B. hath continually from the said twenty-ninth day of September in the year aforesaid, until the day of exhibiting the bill of the said J. held and enjoyed the said premises, with the appurtenances, as tenant thereof to him the said J. by virtue of and under that demise, and still holds and enjoys the same : yet the said B. not

Assumpsit for not using premises in an husbandlike manner, which were demised from year to year ; for carrying off and spending compost elsewhere than on premises ; for cutting down the underwood that supported pales of the park ; cutting hedges in an improper and unhusbandlike manner ; and for not plashing and laying down hedges ; for cutting faggots from hedges, and laying them on the young stubs, which by squeezing prevented their springing and growing ; for lopping trees which had never before been lopped ; rooting up trees, pollards, and bushes, and extirpating, &c.

regarding his said promise and undertaking by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. in this behalf, hath not used the said premises in a good husbandlike manner during his said possession and enjoyment thereof, according to his said promise and undertaking in that behalf made with the said J. ; but on the contrary thereof the said B. during the time he hath so held and enjoyed the said premises as aforesaid, to wit, on the twenty-third day of March in the year of Our Lord 1788, and on divers other days and times between that day and the day of exhibiting the bill of the said J. did load, take, and carry away divers large quantities of dung and compost, to wit, &c. which, during the time the said B. held and enjoyed the said premises of the said J. at aforesaid, had arisen and been made upon the said premises, off and from the said premises, and did not use and spend the same or any part thereof upon the said premises, or part thereof, but used and spent the same elsewhere, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time that the said B. hath held and enjoyed the said premises with the appurtenances as aforesaid, to wit, on the twenty-fifth day of January in the year of Our Lord 1788, and on divers other days and times between that day and the day of exhibiting the bill of the said J. he the said B. cut down, prostrated, and destroyed the underwood, to wit, &c. then standing, &c. growing against the pales of the said park, and supporting the same, and which had not usually theretofore been cut, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time the said B. hath held and enjoyed the said premises, with the appurtenances as aforesaid, to wit, on the twenty-fifth day of January in the year of Our Lord 1788, and on divers others, &c. he the said B. cut the hedges and underwood, to wit, &c. of and belonging to the said premises in a very improper and unhusbandlike manner, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that although, during the time that the said B. hath held and enjoyed the said premises with the appurtenances as aforesaid, to wit, on the twenty-fifth of January 1788, and on divers others, &c. he the said B. cut other the hedges, to wit, &c. of the said premises; which said last-mentioned hedges, at each and every of the times last aforesaid, ought and should, according to good husbandry, have been *plashed and laid down*; yet the said B. did not, nor at any or either of the times last aforesaid, when he so cut the said last-mentioned hedges, plash or lay down the same hedges or any of them in a good husbandlike manner, or in any manner whatsoever, but, on the contrary thereof, wholly omitted and neglected so to do, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time that

the

the said B. possessed, held, and enjoyed the said premises, and after he had cut the said hedges of the said premises as last aforesaid, to wit, on the said days and times last aforesaid, he the said B. *put, placed, and laid divers, to wit, one thousand faggots, then and there made from and with the wood, underwood, and bushes cut and taken by the said B. from and out of the said last-mentioned hedges so by him cut as last aforesaid, in and upon the stubs then remaining and being in the hedges last aforesaid, and kept and continued the same so put, placed, and laid thereon for a long time, to wit, from and until the day of exhibiting the bill of the said J. and thereby and therewith crushed, squeezed, damaged, spoiled, and destroyed the shoots of the said stubs then growing and springing from the same, and thereby and therewith prevented and hindered other shoots from springing and growing from the same, and which otherwise would have then and there sprung and grown therefrom, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the times that the said B. hath held and enjoyed the said premises, with the appurtenances as aforesaid, to wit, on the twenty-fifth of January A. D. 1788, and on divers other, &c. at, &c. aforesaid, he the said B. cut and lopped divers trees, to wit, &c. then growing and being on the said premises, which had never theretofore been cut or lopped, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time the said B. hath held and enjoyed the said premises with the appurtenances as aforesaid, to wit, on the twenty-fifth of January A. D. 1788, and on divers other, &c. at, &c. aforesaid, he the said B. cut and lopped divers other trees, to wit, &c. then growing and being on the said premises, in an unhusbandlike manner, and otherwise than such trees had been theretofore cut or lopped, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time that the said B. hath held and enjoyed the said premises with the appurtenances as aforesaid, to wit, on the twenty-fifth of January A. D. 1788, and on divers other, &c. he the said B. rooted up, stocked up, and extirpated divers trees, pollards, and bushes, to wit, &c. then growing and being in the said park, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid: and the said J. further says, that during the time that the said B. hath held and enjoyed the said premises with the appurtenances as aforesaid, to wit, on the twenty-fifth of January in the year aforesaid, and on divers others &c. he the said B. rooted up, stocked up, and extirpated divers other trees, pollards, and bushes, to wit, &c. then growing and being on the said premises, contrary to good husbandry, and the said promise and undertaking of the said B. in that behalf made as aforesaid. And whereas, &c. (a 2d Count for money had and received; the 3d Count upon an account stated, and the follow-*

ing conclusion :) Yet the said B. hath not paid to the said J. the said several sums of money, or any part thereof (although often requested), but to pay the same, or any part thereof, to the said J. he the said B. hath altogether refused, and still doth refuse. (Damages 400*l*. Suit or pledges, &c.)

Assumpsit against the assignee of a term subject to a covenant to repair, for not repairing, whereby plaintiff was obliged to pay his lessor money, and the costs of prosecuting plaintiff.

LONDON, *ff*. For that whereas the said John, before and at the time of the making of the promise and undertaking of the said Roger hereafter next mentioned, was lawfully possessed of and in two certain messuages or tenements situated and being at the parish of St. Botolph in the ward of Aldersgate in L. aforesaid, with the appurtenances, for the then residue of a certain term of six years six calendar months and eighty days, commencing from the twenty-fifth of December A. D. 1788, by virtue of a certain demise or lease thereof made from one John Reeves to the said John Langhorn and his assignees, by indenture bearing date the nineteenth of January A. D. 1779, under divers covenants and agreements contained in the said indenture, on the part and behalf of the said John, as such lessee thereof, and his assignees to be kept and performed; whereof the said Roger, before the making of his said promise and undertaking, to wit, on the nineteenth of October A. D. 1779, there had notice; and thereupon afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said John L. at the special instance and request of the said Roger, would sell and assign over the same to the said Roger for the then residue of the said term; subject to the covenants and agreements on the lessee's part and behalf in the said indenture contained, he the said Roger undertook and then and there faithfully promised the said John L. that he the said Roger would perform and keep all and singular such covenants and agreements from Michaelmas-day then last past: and the said John L. avers, that he, confiding in the said promise and undertaking of the said Roger, did then and there, to wit, on the said nineteenth of October 1779 aforesaid, at L. aforesaid, in the parish and ward aforesaid, sell or assign over to the said Roger the said messuages or tenements, with the appurtenances, so demised to him the said John L. as aforesaid, for the then residue of the said term, subject to such covenants and agreements on the lessee's part and behalf as aforesaid; and that the said Roger, by virtue of such sale and assignment, then and there entered upon the same, and became and was possessed thereof for the then residue of the said term: and although amongst the covenants and agreements contained in the said indenture, there was a certain covenant and agreement with the said John Reeves on the part of the said John L. as such lessee of the said messuages or tenements, with the appurtenances, as aforesaid, well and sufficiently to repair the same during the said term, and to leave them so well and sufficiently repaired at the expiration thereof; yet the said Roger, not regarding his said promise and undertaking so by him
made

made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said John L. in this behalf, did not nor would (although often requested) perform or keep the said covenant and agreement hereinbefore mentioned, according to the tenor and effect of his said promises and undertakings, but therein wholly failed and made default; and, on the contrary thereof, after such sale and assignment from the said John L. to the said Roger as aforesaid, and during the said demise, to wit, on the tenth of June A. D. 1782, and from thence until the expiration of the said term, permitted and suffered the said messuages or tenements, with the appurtenances, to be greatly ruinous and decayed for want of necessary repairing thereof, and, at the expiration of the said term, left the same so out of repair as aforesaid, in breach of the said covenant and agreement so made by the said John L. with the said John Reeves, and of the promise and undertaking of the said Roger so by him made to the said John L. in that behalf aforesaid; by reason of which said default of the said Roger, the said John L. afterwards, to wit, on the third of May A. D. 1788, at L. aforesaid, in the parish and ward aforesaid, was obliged to pay, and actually paid a large sum, to wit, the sum of sixty pounds of lawful money of Great Britain, as a satisfaction to the said John R. for such breach of covenant as aforesaid, and his costs of prosecuting a certain action at law against the said John L. in respect thereof, (the same being a reasonable payment in that behalf,) and also another large sum, to wit, the further sum of thirty pounds of like lawful money in and about the defence of the said action. (Other Counts for money paid; account stated; with common conclusion to the two last promises. Pledges, &c.)

S. MARRYATT,

HERTFORDSHIRE, ff. Samuel Moody esquire complains of Daniel Winfield, being, &c. for that whereas heretofore, to wit, on the first day of January A. D. 1787, at Watford in the said county of Hertford, the said S. at the special instance and request of the said D. demised to the said D. a certain farm, consisting of a messuage, barns, stables, out-buildings, yards, and divers, to wit, one hundred and fifty acres of land, with the appurtenances, situated and being at Watford in the said county of H. to hold the same to the said D. from the twenty-ninth of September A. D. 1786, for the term of three years thence next ensuing, at and under a certain yearly rent to be therefore paid by the said D. to the said S.; and thereupon, in consideration thereof, he the said D. (amongst other things) undertook, and then and there faithfully promised the said Samuel, that he the said Daniel would, during the said term, spend, lay, and use upon the said demised lands, for the cultivation and improvement thereof, all the dung and manure that should be made on the said farm for the use of the said Samuel, without any allowance for the same: and the said Samuel in fact says, that by virtue of the said demise he the

Assumpsit for not spending manure upon farm, except the last year, but carrying it off at the end of the year after it had spent that year, contrary to agreement; lopping timber trees which had not been usually lopped; for not spending manure made and brought on premises in lieu of hay sold off, except last year, and then carrying dung elsewhere.

2d Count.

said D. entered into the said demised premises with the appurtenances, and became possessed thereof; yet the said D. not regarding his said promise and undertaking so made by him as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Samuel in this behalf, *did not*, during the said term, *spend*, lay, and use upon the said demised lands, for the cultivation and improvement thereof, *all the dung and manure* that was made on the said farm during the said term, *except the last year's* dung and manure thereof, and did not, at the end of the said term, leave the last year's dung and manure thereof upon the said farm for the use of the said S. according to his said promise and undertaking, but, on the contrary thereof, converted and disposed of the said dung and manure for his own use, and elsewhere than upon the said farm, whereby the said farm is very much impoverished and damaged. And the said S. further says, that at the said time of making the said demise, to wit, at W. aforesaid, in the county aforesaid, the said D. in consideration of the said demise, undertook, and then and there faithfully promised the said Samuel, that he the said D. would not, during the said term, *lop any timber trees* growing upon the said demised farm, which had not been usually lopped before the making of the said demise; yet the said D. not regarding his said last mentioned promise and undertaking, but contriving and fraudulently intending craftily to deceive and defraud the said S. in this behalf, did at divers times, during the said term, lop divers, to wit, one hundred timber trees growing upon the said last mentioned farm, which had not been usually lopped before the making of the said demise, contrary to his said promise and undertaking.

3d Count.

And whereas afterwards, to wit, on the first day of January 1787, at W. aforesaid, in the county aforesaid, the said Samuel, at the special instance and request of the said D. demised to the said D. a certain other farm, consisting of a messuage, barns, stables, out-buildings, yards, and divers, to wit, one hundred and fifty acres of land, with the appurtenances, situated and being at W. in the county aforesaid, to hold the same to the said D. from the twenty-ninth day of September in the said year 1776, for the term of three years then next ensuing, at and under a certain yearly rent to be therefore paid by the said D. to the said S. and thereupon, in consideration thereof, he the said D. (amongst other things) undertook, and then and there faithfully promised the said Samuel, that he the said D. would, during the said term, lay and spend upon the said lands, for the cultivation and improvement thereof, all the dung and manure that should be made upon the said farm, or should be brought thereon by the said D. in lieu of hay produced from the said farm and sold off the same, except on the last year of the said term, and that he the said D. at the end of the said term, would leave on the said farm all the dung and manure that should be made on the said farm, or brought thereon by the said D. in lieu of hay sold off as aforesaid during the last year of the said term,

for

for the use of the said Samuel, without any allowance to be made him for the same: and the said Samuel in fact says, that, by virtue of the said last mentioned demise, he the said D. entered into the said last mentioned demised premises with the appurtenances, and became possessed thereof; yet the said D. not regarding his said last mentioned promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Samuel in this behalf, *did not*, during the said term, *lay and spend upon the said lands, for the cultivation and improvement thereof, all the dung and manure made upon the said farm, or brought thereon as aforesaid, excepting the last year of the said term; and at the end of the said term did not leave on the said farm all the dung and manure that were made on the said farm, or brought thereon as aforesaid, during the last year of the said term, for the use of the said Samuel, according to his said last mentioned promise and undertaking, but, on the contrary thereof, converted and disposed of the said dung and manure for his own use, and elsewhere than upon the said farm, whereby the said farm was and is very much impoverished and damaged.* (Indebitatus assumpsit for divers large quantities of dung, manure, goods, wares, and merchandizes bargained and sold by the plaintiff to the defendant at his request; other common Counts; and breach in non-payment of the money.)

GEO. WOOD.

LONDON, *ff.* Letitia Jones, Thomas Allen, and Thomas Hockley, executrix and executors of the last will and testament of Richard Jones deceased, complain of Henry Briant, being, &c. for that whereas the said R. Jones, before and at the time of the making of the promise and undertaking of the said Henry hereinafter next mentioned, was lawfully possessed, for the then residue of a term of years which is not yet expired, of a certain messuage and yard, with the appurtenances, situate and being in the parish of St. George in the county of Middlesex; and thereupon heretofore, in the lifetime of the said R. Jones, to wit, on the twenty-fourth day of March 1789, at the parish of St. Mary le Bow in the ward of Cheap, in L. aforesaid, in consideration that the said Richard Jones, at the special instance and request of the said Henry, would then and there let and demise to him the said messuage and yard, with the appurtenances, he the said Henry then and there undertook, and faithfully promised the said Richard Jones, to pay him rent for the same, at and after the rate of twelve pounds per annum by two equal payments on the twenty-ninth day of September and twenty-fifth of March: and the said Letitia, Thomas A., and Thomas H. executrix and executors as aforesaid, say, that the said Richard Jones in his lifetime, confiding in the said promise and undertaking of the said Henry, did then and there, to wit, on the day and year aforesaid, at L. aforesaid, in the parish of St. Mary le Bow in the ward aforesaid, let and de-

Assumpsit by Executrix and Executors for half a year's rent which became due since the death of testator. Count for use and occupation, and agreement.

mise the said messuage and yard, with the appurtenances, to the said Henry, who thereupon entered, and from thence, until and after the twenty-ninth day of September in the year aforesaid, continued to hold the same by virtue of such demise: and the said Letitia, Thomas A. and Thomas H. further say, that the said Richard Jones, after the making of the said promise and undertaking of the said Henry, to wit, on the first day of June in the year aforesaid, at L. aforesaid, at the parish last aforesaid in the ward aforesaid, died possessed for the then residue of the said term of years of the said messuage and yard, with the appurtenances, having first duly made his last will and testament, and appointed the said L. Thomas A. and Thomas H. executrix and executors thereof; and that they the said L. Thomas A. and Thomas H. after the death of the said Richard Jones, to wit, on the day and year last aforesaid, at L. aforesaid, at the parish last aforesaid in the ward aforesaid, duly proved the said will in the prerogative court of Canterbury, and became and were possessed of the said messuage and yard, with the appurtenances, as such executrix and executors as aforesaid, for the residue of the said term of years, until and after the twenty-ninth day of September in the year aforesaid; whereof the said Henry had notice: by reason of which said several premises he the said Henry, on the day and year last aforesaid, at L. aforesaid, at the parish last aforesaid in the ward aforesaid, became liable to pay to the said Letitia, Thomas A. and Thomas H. as such executrix and executors as aforesaid, the sum of six pounds, being one half of the yearly rent aforesaid, when he the said Henry should be thereto afterwards requested. And whereas the said Henry afterwards, and after the death of the said Richard Jones, to wit, on the twelfth day of October in the year aforesaid, at L. aforesaid, at the parish last aforesaid in the ward aforesaid, was indebted to the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, in the further sum of ten pounds for the use and occupation of a certain other messuage and yard, with the appurtenances, whereof the said Richard Jones in his lifetime, and at the time of his death, was possessed for the residue of a term of years which is not yet expired, situated and being at the parish of St. George in the said county of M. by the said Henry, for a long time, to wit, the space of six months before, then held, used, and enjoyed at his special instance and request, and by the permission of the said Richard Jones; and being so indebted, he the said Henry, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish of St. Mary le Bow in the ward aforesaid, undertook and faithfully promised the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, to pay them the said last mentioned sum of money, when he the said Henry should be thereto afterwards requested. And whereas afterwards, and after the death of the said Richard Jones, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish last aforesaid in the ward aforesaid, in consideration that the

2d Count.

3d Count.

the said Henry, at his like special instance and request, and by the like permission of the said Richard Jones in his lifetime, and of the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, since the death of the said Richard Jones, had for a long time, to wit, the space of six months then elapsed, held, used, and enjoyed a certain other messuage and yard, with the appurtenances, whereof the said Richard Jones in his lifetime, and at the time of his death, was possessed for the residue of a term of years which is not yet expired, situate and being at the parish of St. George in the said county of Middlesex, he the said Henry undertook and faithfully promised the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, to pay them so much money as they therefore reasonably deserved to have, when he the said Henry should be thereto afterwards requested: and the said L. Thomas A. and Thomas H. say, that they, as such executrix and executors as aforesaid, therefore reasonably deserved to have of the said Henry the further sum of ten pounds, to wit, at L. aforesaid, in the parish of St. Mary le Bow in the ward aforesaid; whereof the said Henry afterwards, to wit, on the day and year last aforesaid, there had notice: Yet the said Henry, not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, in this behalf, hath not (although often requested) paid the said several sums of money, or any part thereof, to the said L. Thomas A. and Thomas H. as such executrix and executors as aforesaid, or to either of them, but hath hitherto wholly refused, and still refuses so to do, to their damage, as such executrix and executors, of twenty pounds; and therefore they bring suit, &c. And they bring here into court the letters testamentary of the said Richard Jones, which fully prove to the said Court that the said L. Thomas A. and Thomas H. are the executrix and executors of the last will and testament of the said R. Jones, and have the administration thereof, &c. (Pledges, &c.)

(MUTUAL PROMISES.) And the said George Nodes avers, that the said Thomas Fullwood afterwards, to wit, on the twenty-fourth day of March A.D. 1765 aforesaid, by virtue of the said agreement, and in pursuance thereof, entered into a part of the said demised premises, according to the tenor of the agreement aforesaid; and afterwards, to wit, on the twenty-ninth day of September in the year 1765 aforesaid, entered into the residue of all and singular the said demised premises with the appurtenances, (except as before excepted,) and was thereof possessed for a long time of the said term of twelve years, (to wit, for the space of years then next following; and afterwards and before the end and expiration of the said term of years, to wit, on the day of in the year 17 , at Southill aforesaid, left

Several breaches of a special agreement at the suit of a landlord against a tenant.

1st Breach for ploughing up and converting into tillage, whereby an additional rent was incurred and is in arrear.

left and yielded up the possession of the said demised premises with the appurtenances, to wit, unto him the said George Nodes. And the said George Nodes further saith, that he the said George Nodes, from the time of the making the said agreement, and from thencehitherto, hath well and truly performed all things therein contained to be performed and fulfilled: and the said George Nodes further saith, that the said Thomas Fullwood, during the time that he was so possessed of all and singular the said demised premises, (except as before excepted,) with the appurtenances, by virtue of the aforesaid demise, to wit, on the day of in the year 17 , at Southill aforesaid, ploughed up divers, to wit, ten acres of pasture in a certain close called Little Brickhill, parcel of the said demised premises, without the consent of the said George Nodes in writing, and did convert the same into tillage: by means whereof, and according to the tenor of the said agreement, afterwards, to wit, at and on the feast of

A. D. 17 , one hundred pounds, being at and after the rate of ten pounds for every acre of the said ten acres so ploughed up and converted into tillage, of the said rent of ten pounds an acre, to wit, for one year's rent, that is to say, for the said year 17 , on the said last mentioned feast, in the years last aforesaid, became due and payable from the said Thomas Fullwood to the said George Nodes by virtue of the said agreement; whereof the said Thomas Fullwood then and there had notice: Yet the said Thomas Fullwood, not regarding, &c. but contriving, &c. (Common conclusion for the one hundred pounds.) And the said George Nodes further saith, that the said Thomas Fullwood, not regarding his promise and undertaking aforesaid, but further contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George Nodes, he the said Thomas Fullwood did not, during all or any part of the said demised term, whilst he so continued in the possession of the said demised premises, (except as before excepted,) with the appurtenances, from time to time, and at all times whilst he continued so possessed, at his own costs and charges, amend, repair, and keep, and when he left and yielded up the said demised premises, leave the said demised messuage, outhouses, dovehouses, buildings, barns, stables, and appurtenances whatsoever thereto belonging in his occupation, and all and every the hedges, ditches, pales, fences, gates, stiles, banks, and grounds, and all other the premises, in good and sufficient repair, and well and sufficiently repaired, amended, fenced, pales, scourged, ditched, and banked, into the hands and possession of the said George Nodes, although he the said George Nodes was during the time aforesaid ready and willing to find, provide, and allow unto him the said Thomas Fullwood rough timber for principal posts, spars, and beams, and tiles and lath, according to the tenor of the agreement aforesaid, and of the promise and undertaking of the said George Nodes so by him made in this behalf as aforesaid; but on the contrary thereof he the said Thomas Fullwood, during the time that he so continued possessed of the

said

2d Breach, not repairing or yielding up premises in repair, although rough timber allowed.

said demised premises, with the appurtenances, (except as before excepted,) to wit, on the fourth day of January in the year 1767, and from thence until the said time that he so left and yielded up the said premises with the appurtenances, suffered and permitted the said demised messuage, out-houses, dove-houses, buildings, barns, and stables, to be ruinous and in great decay for want of needful and necessary repairing and amending thereof in the covering, tiling, slating, and thatching of the same, and in the windows, doors, floors, and window-frames thereof, and in the beams, rafters, joists, walls, and wainscots thereof, and in every other part and particular thereof; and all the hedges, ditches, pales, fences, gates, stiles, banks, and mounds of and belonging to the said demised premises, to be during all that time ruinous, prostrated, fallen down, and in great decay for want of needful, necessary cleansing, scouring, repairing, and amending thereof; and also all the ditches of the said demised premises to be during all that time foul, ruinous, filled up with mire, and out of repair for want of cleansing, scouring, and amending thereof, although the said Thomas Fullwood to perform his said agreement and promise in this behalf, on the said day of

A. D. 17 aforesaid, and very often before that time, at Southill aforesaid, was requested by the said George Nodes; but the said Thomas Fullwood to repair and amend, cleanse and scour the same, or any part thereof, during all that time, there neglected and wholly refused, and suffered and permitted the same to be and continue so out of repair, broken down, prostrated, in decay, foul and choaked up, and to want necessary repair and amendment thereof; and during all the time aforesaid, and when he left and yielded up the said premises, he left and yielded up said demised premises so ruinous and out of repair, prostrate, fallen down, filled and choaked up, and in great decay for want of needful and necessary repairing and amending, cleansing and scouring thereof, contrary to the form and effect of the said agreement, and of the promise and undertaking so by him made in that behalf as aforesaid, to wit, at Southill aforesaid. And the said George Nodes further saith, that the said Thomas Fullwood not regarding his aforesaid promise and undertaking, but further contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George Nodes in this behalf, he the said Thomas Fullwood did not during the said demised term, and whilst he continued so possessed of the said demised premises, (except as before excepted) with the appurtenances, employ, dispose, and bestow in and upon the said demised premises, in good husbandlike manner, all such muck, dung, soil, manure, and compost as during that time came, arde, and was made of and upon the said demised premises, (except as before excepted) although to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid, he the said Thomas Fullwood was oftentimes requested by the said George Nodes, to wit, whilst he the said Thomas Fullwood so continued possessed of the said demised

3d Breach, not spending dung, &c. upon premises, but using it elsewhere.

4th Breach, not
spending hay,
&c. upon pre-
mises, but sell-
ing it.

demised premises, (except as before excepted,) with the appurtenances, to wit, on the first of January 1767, and on divers other days and times between that day and the times he so left and yielded up the said premises with the appurtenances at Southill aforesaid, spent, employed, disposed of, and consumed elsewhere than on the said demised premises a great quantity, to wit, one hundred cart-loads of soil, one hundred cart-loads of manure, and one hundred cart-loads of compost, which during the time that he the said Thomas Fullwood continued so possessed of the said demised premises with the appurtenances, did come, arise, and were made upon the said demised premises, contrary to the tenor of the said agreement, and the said promise and undertaking of the said Thomas Fullwood so by him made in this behalf as aforesaid, to wit, at, &c. And the said George Nodes further saith, that the said Thomas Fullwood not regarding his aforesaid promise and undertaking so by him made in this behalf as aforesaid, but contriving, &c. to deceive and defraud the said George Nodes in this behalf as aforesaid, he the said Thomas Fullwood did not, during the whole time that he so continued so possessed of the said demised premises with the appurtenances, every year during that time spend upon the premises so to him demised as aforesaid, or any part thereof, all the hay, straw, and clover, that during that time did arise from and was growing upon the said premises, although to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid, he the said Thomas Fullwood was oftentimes requested by the said George Nodes, to wit, whilst he the said Thomas Fullwood continued so possessed of the said demised premises with the appurtenances, to wit, at Southill aforesaid; but on the contrary thereof he the said Thomas Fullwood, whilst he so continued so possessed of the said demised premises with the appurtenances, to wit, on the first of January 1767, and on divers other days and times between that day and the time when he so left and yielded up the said demised premises with the appurtenances, did sell a large quantity, to wit, one hundred cart-loads of hay, and one hundred cart-loads of straw, which during the said time that he so continued possessed of the said demised premises with the appurtenances, by virtue of the said demise, arose from and grew upon the said demised premises, contrary to the tenor of the said agreement aforesaid, and of the aforesaid promise and undertaking of the said Thomas Fullwood so by him made in this behalf as aforesaid, to wit, at Southill aforesaid. And the said George Nodes further saith, that the said Thomas Fullwood contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George Nodes in this behalf, he the said Thomas Fullwood, whilst he so continued possessed of the said demised premises, with the appurtenances, under and by virtue of the said demise, to wit, on the first of January 1768, at Southill aforesaid, cut down divers trees, to wit, two oak pollards under twelve years growth, (although often requested to perform his promise and undertaking aforesaid

5th Breach, cut-
ting down pol-
lards under a
particular
growth.

aforesaid in this behalf,) contrary to the tenor of the aforesaid agreement, and of the promise and undertaking of the said Thomas Fullwood so by him made in this behalf as aforesaid. And the said George Nodes further saith, that the said Thomas Fullwood not regarding his promise and undertaking aforesaid, but contriving, &c. &c. he the said Thomas Fullwood did, during the time that he so continued possessed of the said demised premises with the appurtenances, by virtue of the said demise, to wit, on the first of January 1767, and on and at divers other days and times whilst he so continued possessed thereof, lopped and plashed divers hedges, and divers and very many quicks, on the said demised premises, and did not at any or either of those times, when he so lopped and plashed the same, or at any or either of them, well and sufficiently, and in an husbandlike manner, lay the quicks at the places where he so lopped and plashed, (although to perform his aforesaid promise and undertaking in this behalf he the said Thomas Fullwood was often requested by the said George Nodes,) but therein wholly failed and made default, contrary to the tenor of the aforesaid agreement, and of the aforesaid promise and undertaking of the said Thomas Fullwood so by him made in this behalf as aforesaid, to wit, at Southill aforesaid. And the said George Nodes further saith, that he the said Thomas Fullwood, contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George Nodes in this behalf, although he the said Thomas Fullwood, during the time that he so continued possessed of the said demised premises with the appurtenances, to wit, every year during the said time, did plant on the said premises, according to the tenor of the aforesaid agreement, twenty good willow setts, that is to say, twenty in each and every of the said years, amounting in the whole to a large number, to wit, to willow setts; yet the said Thomas Fullwood did not, during all or any part of the time that he so continued in possession of the said demised premises with the appurtenances, by virtue of the said demise, preserve them from spoil, (although to perform his aforesaid promise, &c.) but on the contrary thereof, he the said Thomas Fullwood, whilst he so continued possessed of the said demised premises, with the appurtenances, by virtue of the said demise, to wit, on the first of January 1769, and often afterwards between that day and the time of his leaving and yielding up the possession of the said premises, suffered and permitted the same to be eaten up and trodden down by cattle, and to be wholly spoiled for want of due care in the preserving of the same from spoil, to wit, at Southill aforesaid, contrary to the tenor of the aforesaid agreement, and of the said promise and undertaking of the said Thomas Fullwood so by him made in this behalf aforesaid, to wit, at, &c. aforesaid. And the said George Nodes further saith, that the said Thomas Fullwood not regarding, &c. but contriving, &c. he the said Thomas Full-

6th Breach, lopping hedges without placing the quicks in an husbandlike manner.

7th Breach, not preserving willows planted pursuant to agreement from spoil by cattle.

furzes (except one-third) upon the premises, but spending the former elsewhere, and in several successive years selling above one-third of the latter.

wood

8th Breach, not spending the wood and lop of willows and cut

wood did not, during the time that he so continued possessed of the said demised premises with the appurtenances, spend all the wood and lop off all the willows and all the cut furzes, except one-third part of the cut furzes, upon the aforesaid premises (although to perform his aforesaid promise, &c.) ; but on the contrary thereof, the said Thomas Fullwood, during the time that he continued so possessed of the said demised premises with the appurtenances, by virtue of the said demise, to wit, on the first of January 1767 aforesaid, and on divers other days and times between that day and the time of his leaving and yielding up the said premises, sold and disposed of divers, to wit, twenty cart-loads of wood and twenty cart-loads of lop of willows, to be used, spent, and consumed, and which was used, spent, and consumed, elsewhere than on the said demised premises ; and in the several and respective years of Our Lord 1765, 66, 67, 68, 69, and 70, in each and every of these years, sold and disposed of divers, to wit, five hundred cart-loads of furzes, arising and coming off the said premises, over and above one-third part of the furzes arising, coming, and cut off from the said premises, in each and every of the said years, contrary to the tenor of the aforesaid agreement, and of the aforesaid promise and undertaking of the said Thomas Fullwood by him made in this behalf as aforesaid, to wit, at Southill aforesaid.

9th Breach, not
laying down a
particular clofe
for sward, or
sowing it with
proper grass-
seeds.

And the said George Nodes further saith, that the said Thomas Fullwood contriving, &c. to deceive, &c. he the said Thomas Fullwood, although he was and continued in possession of the said demised premises with the appurtenances, for a longer space of time than six years, to wit, for the space of years, and although in each and every of the first six years of the said time he did put on and sow the clofe of pasture ground called Hartthorn, in the said agreement mentioned ; yet the said Thomas Fullwood did not then, to wit, at the end and expiration of the said six years, or at any time in the last of the said six years, or at any time after, lay down the same for sward, or sow the same with a sufficient quantity of good grass-seed, such as best suited the nature of the soil, or was most proper for that ground to be sown with, and continue the same forward until the time that he left and yielded up the premises as aforesaid (although to perform his aforesaid promise and undertaking, so by him made in this behalf as aforesaid, he the said Thomas Fullwood was requested by the said George Nodes oftentimes, to wit, at Southill aforesaid) ; but he the said Thomas Fullwood therein wholly failed and made default, contrary to the tenor and effect of the aforesaid agreement, and of the said promise and undertaking of the said Thomas Fullwood so by him made on this behalf as aforesaid, to wit, at Southill aforesaid. And whereas, &c. (a Count for money laid out, lent, had and received ; and common conclusion to these Counts. Pledges, &c.)

LANCASHIRE,

LANCASHIRE, to wit. J. L. E. K. and E. B. complain, &c. Declaration in special assumpsit by a landlord against the assignees of his tenant's farm and goods, on a promise by them to pay all arrears of rent at the time of the assignment, if he would not obstruct their taking possession, nor distrain, &c. but permit them to sell the stock.

for that whereas before the making of the promise and undertaking hereafter mentioned, one A. B. was tenant for years, to wit, from year to year, of a certain messuage or dwelling-house, and a close of land, with the appurtenances, of the said plaintiff, at and under a certain yearly rent, to wit, the yearly rent of eighteen pounds, of, &c. therefore, payable to the said plaintiff; and being such tenant as aforesaid, he the said A. B. during his said tenancy, and before the making of the said promise and undertaking of the said defendants hereafter next mentioned, assigned over all his estate and interest of and in the said premises to the said defendants, without the leave or licence, and against the will of the said plaintiff, under which said assignment the said defendants entered into the possession of the said premises; and the said defendants being so possessed thereof heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would then and there accept and continue them as tenants of the said premises in the place and stead of the said A. B. upon the same terms that the said A. B. had theretofore had and held the same, they the said defendants undertook, and then and there faithfully promised the said plaintiff to pay all arrears of rent then due and owing from the said A. B. to the said plaintiff, for and on account of the same premises, within a reasonable time: and the said plaintiff avers, that although he the said plaintiff, confiding in the said promise and undertaking of the said defendants, did then and there accept and continue, and from thenceforth hitherto hath continued them tenants of the same premises in the place and stead of the said A. B. upon the terms aforesaid; and although at the time of the making of the promise and undertaking, there was in arrear and unpaid, from the said A. B. to the said plaintiff, for and on account of the said demised premises, a large sum of money, to wit, the sum of eighteen pounds, of, &c. of which the said defendants then and there had notice; and although they the said defendants have since paid a part to the said plaintiff, to wit, the sum of nine pounds, of, &c. on account thereof, yet the said defendants, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, hath not, nor hath either of them as yet paid the residue of the said arrears of rent, amounting in the whole to a large sum of money, to wit, the sum of nine pounds, of, &c. or any part thereof, to the said plaintiffs, (although a reasonable time for that purpose hath long since elapsed, and although so to do they the said defendants afterwards, to wit, on, &c. at, &c. were requested by the said plaintiff,) but they so to do have, and each of them hath hitherto wholly refused, and still do refuse, and the same is wholly unpaid to the said plaintiff, to wit, at, &c.

And whereas, before the making of the promise and undertaking hereafter next mentioned, one A. B. was tenant for years, to wit, from year to year, of a certain other messuage or dwelling-house, and a close of land, with the appurtenances, of him the said plaintiff, situated at, &c. under a certain demise thereof theretofore made to him by the said plaintiff, at and under a certain yearly rent,

2d Count, in consideration plaintiff would forbear to distrain for one year's rent.

rent, to wit, the yearly rent of eighteen pounds, of, &c. whereof, at the time of the assigning of the said demised premises hereafter next mentioned, a large sum, to wit, the sum of eighteen pounds, was due and in arrear from the said A. B. to the said plaintiff, to wit, at, &c.; and the said A. B. so being such tenant, and the said rent so being due from him for the said premises as aforesaid, he the said A. B. during the continuance of the said demise, and before the making of the promise and undertaking of the said defendants hereafter next mentioned, assigned over all his estate and interest of and in the said last mentioned premises, together with all and singular the goods, chattels, and stock of him the said A. B. upon the same to the said defendants; under which assignment the said defendants accordingly entered upon and took possession of the said last mentioned assigned premises; and being so possessed thereof heretofore, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would not dispute the said assignment, and would forbear to disturb the said possession of the said last mentioned demised premises, or the goods, chattels, and stock thereon, for or on account of the arrears of rent so due to him for the same as aforesaid, they the said defendants undertook, &c. to pay to him all the said arrears of rent so due and owing to him for and in respect of the said demised premises as aforesaid, when they the said defendants should be thereto afterwards requested: and the said plaintiff in fact says, that he, confiding in the said last mentioned promise and undertaking of the said defendants by them made as aforesaid, did not dispute the said assignment, but did then and there forbear, and from thence hitherto hath forborn, to disturb their said possession of the said last mentioned demised premises, and the goods, chattels, and stock thereon, for and on account of the said arrears of rent so due to him for the same as aforesaid, to wit, at, &c.: and although they the said defendants have since paid to the said plaintiff a part, &c. &c. (conclude as in first Count.) *And whereas*, at the time of the making of the promise and undertaking hereafter next mentioned, the said defendants, by assignment from the said A. B. were possessed of and in a certain other messuage and close, with the appurtenances, situated in, &c. (whereof the said A. B. at the time of such assignment, was tenant, to wit, from year to year, to the said plaintiff, at a certain yearly rent, to wit, the yearly rent of eighteen pounds, therefore, payable to the said plaintiff, of which said rent a large arrear, to wit, the sum of eighteen pounds was then and there due to the said plaintiff,) and also of certain goods, chattels, stock, and crop upon the said messuage, close, and premises, liable to the distress of the said plaintiff for the said arrears of rent; and the said defendants, being so possessed as aforesaid, heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would forbear to distrain the goods, chattels, stock, and crop upon the said assigned premises for the said arrears of rent, and would not prevent their making sale of them, they the said defendants undertook,

undertook, &c. the said plaintiff to pay to him the said arrears of rent, when they the said defendants should be thereto afterwards requested: and the said plaintiff avers, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did forbear, and from the making thereof hitherto hath forborn, to distrain the said goods, chattels, stock, and crop upon the said assigned premises for the cause aforesaid, and did not prevent, nor from thence hitherto hath prevented the sale thereof by them the said defendants, to wit, at, &c.: Yet the said defendants, not in the least regarding, &c. but contriving, &c. the said plaintiff in this behalf, hath not as yet paid the said arrears of rent to the said plaintiff, or any part thereof (although so to do they, &c.), but they so to do, &c. (Add Counts for use and occupation; money had and received; an account stated; and common conclusion.)

T. BARROW.

CHESHIRE, to wit. **T. F. T. F. and J. D.** complain of **J. W. being, &c.** for that whereas before and at the time of the making of the indenture hereafter mentioned, and before the committing of the grievance hereafter next mentioned, one **A. B.** late of, &c. yeoman, deceased, in his lifetime was seised in his demesne as of fee of and in the several premises hereinafter next particularly mentioned to have been demised by the said **A. B.** and being so seised thereof heretofore in the lifetime of the said **A. B.** to wit, on, &c. at, &c. by a certain indenture, bearing date the same day and year, and then and there made between the said **A. B.** of the one part, and one **J. D.** in the said county of **C.** labourer, of the other part, (one part of which said indenture, sealed with the seal of the said **J. D.** they the said plaintiffs now bring into court, the date whereof is the day and year aforesaid,) he the said **A. B.** for the considerations therein mentioned, did demise, set, and to farm let unto the said **J. D.** all that messuage and tenement, with the appurtenances, situated, lying, standing, and being in, &c. then in the holding or occupation of him the said **J. D.** as tenant or farmer thereof, to or under the said **A. B.** and all houses, out-houses, edifices, buildings, yards, folds, backfides, orchards and gardens, fields, closes, meadows, leasows, inclosures, pingots, pastures, and parcels of land, with their appurtenances, lying and being in **L.** aforesaid, to the said messuage or tenement belonging, commonly called and known by the several names of, &c. or by whatsoever other name or names the same, or any of them, then was or were or had been called or known; containing in the whole, by computation, twelve acres of Cheshire large measure, were the same more or less, and all ways, waters, &c. whatsoever, to the said messuage, tenement, lands, hereditaments, and premises lying, belonging, or in any wise appertaining, with their and every of their appurtenances, to have and to hold the said messuage and building thereunto belonging, and a convenient field for an outlet for cattle, from the first day of May then last past, and all other the said

Declaration on a special agreement by the executors of a tenant in fee of certain premises which he had demised by indenture for a term, and then devised the reversion to plaintiffs, and then died; after his death the plaintiffs purchased a surrender of the lease of the remainder of his term, and then demised the premises to defendant, to hold under the same terms as the former lease, one of which was to spend the dung, hay, &c. and leave such as remained at the end of the term for the succeeding tenant: breach that he did neither.

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fields, closes, meadows, parcels of lands, hereditaments, and premises therein before mentioned to be demised, and every part and parcel thereof, with their and every of their appurtenances, from the second of February also last past, unto the said J. D. his executors, administrators, and assigns, for the term of eleven years thence next respectively ensuing, and fully to be complete and ended, at and under a certain yearly rent therefore, payable by the said J. D. to the said A. B. his heirs and assigns; in and by which said indenture the said J. D. did, amongst other things, covenant, promise, and grant to and with the said A. B. his heirs and assigns, that he the said J. D. should and would use and consume all the hay and straw, and expend, lay, and bestow all the muck, dung, ashes, compost, or manure which should or might be had, gathered, or made upon or from the said demised premises, or any part thereof, during the said term, upon the said premises, or some part or parts thereof, and not elsewhere; and in case any such dung, ashes, compost, or manure should remain unspent thereon at the expiration of the said term, should and would leave the same to the use and disposal of the said A. B. his heirs or assigns; by virtue of which said demise he the said J. D. afterwards, and long before the committing of the grievance hereafter next mentioned, entered into all and singular the said demised premises with the appurtenances, and was and remained possessed thereof until his quitting the same as hereafter mentioned (the reversion thereof, with the appurtenances, belonging to the said A. B.). And the said plaintiffs further say, that the said J. D. being so possessed of his said term therein and the said reversion thereof, with the appurtenances so belonging to the said A. B. as aforesaid, the said A. B. afterwards, and before the quitting of the said demised premises by the said J. D. as hereafter mentioned, to wit, on, &c. at, &c. duly made his last will and testament in writing, bearing date the day and year last aforesaid, and thereby, among other things, gave and bequeathed the reversion of and in the said premises with the appurtenances to the said plaintiffs, and afterwards, and before the quitting the said demised premises by the said J. D. as hereafter mentioned, and before the committing of the grievance hereafter next mentioned, to wit, on, &c. died without altering or revoking his said will; upon whose death the said plaintiffs entered into and became, and were legal owners and proprietors, and possessed of the reversion of and in the said demised premises with the appurtenances, under and by virtue of the said will, of a larger estate, and for longer duration than the said term so by the said indenture demised to the said J. D. and the term hereafter next mentioned to have been demised by the said plaintiffs to the said defendant; and the said plaintiffs, being such owners and proprietors of the reversion of and in the said demised premises with the appurtenances, and the said J. D. being so possessed of the said premises with the appurtenances, for the term so to him thereof demised as aforesaid, he the said J. D. afterwards, and before the expiration of the said term, and before the committing of the grievances
hereafter

hereafter next mentioned, to wit, on, &c. as to the lands, on, &c. then next following as to the building, by and with the consent and permission, and by the acceptance of the said plaintiffs, surrendered, yielded, and gave up the possession of the said demised premises with the appurtenances, and all his term, right, title, and interest therein, under and by virtue of the before-recited indenture of demise thereof made to him as aforesaid, whereby the said residue of his said term of and in the said demised premises in the said reversion thereof vested in the said plaintiffs, and they thereupon entered into possession of the same. *And whereas* the said plaintiffs being such owners and proprietors, and so possessed of the said premises with the appurtenances, afterwards, and before the committing of the grievance hereafter next mentioned, to wit, on, &c. at, &c. it was agreed by and between the said defendant and the said plaintiffs to the effect following, viz. that the said plaintiffs should let, and the said defendant should and would take of and from them the said plaintiffs, all and singular the said premises in the said indenture and herein before particularly mentioned, to hold to him the said defendant, as tenant thereof to the said plaintiffs, upon the same terms and conditions as were and are in the said indenture particularly mentioned and expressed with respect to the said J. D. the said former tenant thereof: and the said agreement being so made as aforesaid heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, had undertaken and faithfully promised the said defendant to perform and fulfil the said agreement in all things contained on their parts and by halves to be performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiffs to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled: and the said plaintiffs in fact say, that they, in pursuance of the said agreement, afterwards, to wit, on, &c. permitted and suffered the said defendant to enter and take possession thereof; and the said defendant did then and there enter upon and take possession of the said several premises so herein before mentioned to be agreed to be demised to him as aforesaid, to hold upon the terms and according to the tenor and effect of the said agreement; and that he the said defendant accordingly had held and enjoyed the same for a long time, to wit, for two years then next following, and until that day of May A. D. 1788, to wit, at, &c. when he quitted and left the same, and then and there determined the said tenancy; and although during the said term that the said defendant so held and enjoyed the said demised premises, under and by virtue of the said agreement, a large quantity of hay, straw, muck, dung, ashes, compost, and manure, to wit, one hundred loads of, &c. were made and gathered by the said defendant upon and from the said demised premises, to wit, at, &c.; and although the said plaintiffs always, from the making of the said agreement hitherto, have well and truly performed and fulfilled the said agreement in all things contained on

ad Count, on an agreement to take upon the same terms as former tenant held premises.

their part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning thereof, to wit, at, &c. : Yet protesting that the said defendant hath not performed or fulfilled any thing in the said agreement contained on his part and behalf to be performed and fulfilled, they the said plaintiffs in fact say, that the said defendant, not regarding the said agreement, nor his said promise and undertaking so made by him as aforesaid, but contriving, &c. the said plaintiffs in this behalf, did not, at any time during the said term that he so held and enjoyed the said demised premises, under and by virtue of the said agreement, use and consume upon the said premises, so to him demised as aforesaid, or any part thereof, all or any part of the said hay and straw, nor expend, lay, and bestow all or any of the said muck, &c. which were so made and gathered upon and from the said demised premises during the time that he so held and enjoyed the same, although often requested so to do ; but on the contrary thereof, he the said defendant, while he so continued possessed of the said premises with the appurtenances, to wit, on, &c. and on divers other days and times between that day and the time when he so quitted the said premises with the appurtenances, did dispose of, remove, and convey away from and off, and did use and consume elsewhere than upon the said demised premises, a large quantity, to wit, one hundred cart-loads of, &c. of a large value, to wit, of the value of one hundred pounds of, &c. which, during the said tenancy of the said defendant of the said premises with the appurtenances, were so made and gathered from the same as aforesaid, contrary to the tenor and effect of the said agreement, and of the aforesaid promise and undertaking of the said defendant so by him made in this behalf as aforesaid, to wit, at, &c. And the said plaintiffs in fact further say, that at the time when the said defendant so quitted, and left, and determined the said tenancy of and in the said demised premises with the appurtenances as aforesaid, there remained unspent thereon of the dung, &c. which, during his said tenancy, had been made and gathered upon and from the same as aforesaid, a large quantity, to wit, one hundred cart-loads of, &c. of a large value, to wit, of the value of one hundred pounds, of, &c. which he the said defendant then and there, to wit, at, &c. well knew : yet the said defendant, not regarding the said agreement, nor his said promise and undertaking, so made in this behalf as aforesaid, but contriving, &c. the said plaintiffs in this behalf, did not, nor would, when he quitted and left the said demised premises, and at the expiration of his said term therein, leave the said last-mentioned dung, &c. to the use and disposal of the said plaintiffs (although often requested so to do) ; but on the contrary thereof, when he the said defendant so quitted and left the said demised premises as aforesaid, and upon the expiration of his said term therein, he the said defendant took and conveyed away from and off the said demised premises the said last mentioned dung, &c. and converted and disposed thereof to his own use, contrary to the tenor and effect of the said agreement,

and

and of the said promise and undertaking so made in that behalf as aforesaid, and in breach and violation thereof, to wit, at, &c. *And whereas* before and at the time of the making of the agreement hereafter mentioned, the said plaintiffs were lawfully possessed of and interested in the premises hereafter mentioned, of a large estate, and of longer duration than the term hereafter mentioned to have been demised by them to the said defendant, to wit, for the term of twenty years then to come therein, the residue and remainder of a longer term thereof before that time duly created and legally vested in the said plaintiffs; and they the said plaintiffs being so possessed of and interested in the said premises hereafter mentioned, it was heretofore, and before the committing of the grievance hereafter mentioned, to wit, on, &c. at, &c. agreed by and between the said defendant and the said plaintiffs, that the said plaintiffs should demise, set, and to farm let to the said defendant, and the said defendant should take of the said plaintiffs all that messuage or tenement with the appurtenances, situate, standing, lying, and being in, &c. then lately in the holding or occupation of one T. D. as tenant or farmer thereof, and all houses, &c. gardens, &c. with their appurtenances, lying and being in, &c. to the said messuage or tenement belonging, and commonly called or known by the several names of, &c. or by whatsoever other name or names the same or any of them were or had been called or known, containing in the whole by computation twelve acres, large measure, or thereabouts, were the same more or less, and all ways, waters, &c. whatsoever, to the said messuage, tenement, premises, lands, hereditaments, or premises, lying, belonging, or in any wise appertaining, with their and every of their appurtenances; to hold the said messuage and buildings thereunto belonging, and a convenient field for an outlet for cattle, from the said first day of, &c. and all the said fields, &c. hereinbefore mentioned, and every part and parcel thereof, with their and every of their appurtenances, from the second day of, &c. unto the said defendant, his executors, administrators, and assigns, for a long term, to wit, for the term of two years then next following, at and under a certain yearly rent therefore, payable by the said defendant to the said plaintiffs: and it was further agreed by and between the said defendant and the said plaintiffs, amongst other things, to the effect following, that is to say, that he the said defendant should and would use and expend all hay and straw, and expend, lay, and bestow all the muck, &c. which should or might be had, made, or gathered upon or from the said demised premises, or any part thereof, during the term that he the said defendant should hold and enjoy the same, upon the said premises, or on some part or parts thereof, and not elsewhere; and in case any dung, &c. should remain unspent thereon at the expiration of the said term, should and would leave the same to the use and disposal of the said plaintiffs [finish this Count same as last from this mark x to the end]. Add the common money Counts; goods sold, &c. account stated; and common conclusion to such Counts.

3d Count, stating plaintiffs to be possessed of a longer term than demised to defendants, and being so possessed, &c.

Declaration on
an implied as-
sumpsit to hold
on same terms as
in the lease, for
breach of the
implied con-
tract.

LANCASHIRE, to wit. A. W. late of, &c. was attached to answer B. P. of a plea of trespass on the case, &c.; and thereupon the said B. by his attorney, complains, that whereas the said B. on thirtieth day of October 1745, was seised in his demesne as of fee of and in the tenements hereafter next mentioned, with the appurtenances; and being so seised, the said B. afterwards, to wit, on the same day and year aforesaid, at, &c. demised to the said A. his executors, administrators, and assigns, all that his the said B.'s messuage and tenement, with its appurtenances, situate, lying, and being at, &c. as also all those closes, inclosures, or arable, woody, and pasture ground, situate, lying, and being at A. in C. Fell aforesaid, with all other the hereditaments and appurtenances to the said messuages and tenements, closes, and inclosures of arable, woody, and pasture ground at A. aforesaid, belonging, or in any wise of right appertaining or therewith usually occupied, possessed, and enjoyed, together with eighty heafed and heaf-going sheep of the sorts, kinds, numbers and price following, &c. (as in the indorsement); except and always reserved out of that demise to the said B. his heirs and assigns, all the hall end of the dwelling-house at H. aforesaid, with two gardens adjoining thereto, and the orchard called The Great Orchard adjoining to the said gardens, with the liberty to wash, bake, or brew or heat the oven in the wash-house, bake-house, or brew-house, when and as often as he or they should have occasion; and also the new stable and cow-house, with the loft over them, and the pent-house under the corn barn, and the field called Lime Lands, then in farm to J. S. and also liberty to dig, delve, and get peat in the field called Cowhill, and to spread, work, and carry off the same, and also liberty to dig, delve, or get peats, &c. as often as he or they should think proper so to do; to hold the said messuage and tenement, and all those closes and inclosures and parcels of ground, and all and singular other the premises granted and demised, or intended so to be, with their hereditaments and appurtenances, (except as before excepted,) unto him the said A. his executors, &c. to wit, the said sheep from thenceforth, the lands and grounds for the husbandry from the second day of February then next ensuing, and the eatage of the said lands and grounds from the fifteenth day of April then next, and the said houses on said premises from the first day of May then next following, for and during and unto the full end and term of nine years from the said days respectively ensuing, and fully to be compleat; by virtue of which said demise the said A. entered into the said demised premises with the appurtenances (except as before excepted). And whereas before the expiration of the said term, to wit, on the eleventh day of October 1754, at, &c. in consideration that the said B. at the special instance and request of the said A. had then and there undertaken and faithfully promised the said A. that he the said B. would permit and suffer the said A. to hold, occupy, and enjoy the said premises, with the appurtenances, (except as before excepted) and also except the hog-

hog-clofe, &c. from the expiration of the faid term, for the term of three years, fo to fix, and fo to nine years, and would pay yearly, or otherwife difcount and allow out of the yearly rent or fum hereafter next mentioned during the faid time, the faid A. fhould hold and enjoy the faid premifes, (except as before excepted,) all manner of taxes and other impositions, (except the window-tax for that part of the houfe where the faid B. dwelt,) payable and chargeable upon the faid premifes, (except as before excepted,) during fuch time as the faid A. fhould enjoy the fame, and would permit and fuffer the faid A. to dig, delve, and get up peats yearly and every year during fuch time as he fhould hold and enjoy the faid premifes with the appurtenances, to be held and enjoyed by him as aforefaid, in the meffuages called, &c. fufficient for one fire, and not elfewhere, he carefully bedding the fame after the peats fhould be delved and got up; and alfo that it fhould be lawful to and for the faid Anthony, at all and every fuch time that he fhould enjoy the faid premifes fo to be enjoyed by him as aforefaid, as he fhould have needful occafion, to have and take all neceffary botes for hufbandry to be ufed upon the faid premifes, the fame being firft fet forth by the faid B. and his affigns; and it fhould be lawful to and for the faid A. at the end and expiration of the faid time, to fet the dung and manure on fuch part of the faid demifed premifes as fhould come in courfe to be manured, and the ground fo manured to plough and fow with big or barley, and when ripe, to reap and lay the fame in fome of the outhoufes fo to be held and enjoyed by the faid A. and to thrafh corn, and to take the fame away and the ftraw thereof; and if the faid B. fhould think proper to cut down and to take into his own hand the wood clofe, that he would allow to the faid A. five pounds for each year he fo kept it in his own hand; he the faid A. then and there, to wit, on, &c. at, &c. undertook, and then and there faithfully promifed the faid B. that he the faid A. would accordingly hold, occupy, and enjoy the faid premifes, (except as before excepted), with the appurtenances, and alfo would pay to the faid B. for the ufe and occupation thereof yearly and every year during the time he fhould hold and enjoy the fame, the yearly rent or fum of forty pounds, of, &c. at two even and equal payments in every year, to wit, on, &c. and would at his own expence, do, perform, and ferve all offices and other fervices whatfoever due and to be done and performed for or in refpect of the faid premifes fo to be held and enjoyed by him during the time he fhould fo hold and enjoy the fame; and would keep, maintain, and deliver up at the expiration of the faid time, all the houfes, gates, rails, and hedges and fences in the like good and tenantable repair as they were at his entrance upon the fame, by virtue of the demife hereinbefore mentioned, (except the walls of the houfes and the roof timber thereof), to the judgment of J. B. of, &c. and M. H. of, &c. (he the faid B. finding gate and rail pofts, if any fhould be wanting); and fhould not crop, lop, or cut down any wood growing upon the faid premifes

so to be held and enjoyed by him, except the cropping of ashes where he should design to break ground out of Leigh, and what ground he should plough or break up should be such as should fall in course, and should well and sufficiently manure and dung the same in the second year after it should be ploughed or so broken up, and would sow it but one year after it should be so manured, with a crop of oats only, and would cast and expend all the vestures in and upon the lands and grounds so to be held and enjoyed by the said A. and not elsewhere during the said time; and that if the said B. or Elizabeth his mother, should be mindful to keep a cow, he the said A. would keep her winter and summer with hay and straw as his own milch cows, he or they paying or allowing for the same two pounds every year he or they should so keep a cow as aforesaid; and would not put, or cause to be put, any cattle into any of the springs to do damage thereto; and that the said B. should have all the ash cropping that grew upon the common after the said A.'s cattle had eaten the leaves thereof; and would at the end of the said time peaceably deliver up unto the said B. all and singular the messuages, tenements, closes, inclosures, and parcels of ground, as also the like number of heafed and heaf-going sheep of the kinds, sorts, and qualities hereinbefore mentioned, or otherwise would pay for every sheep that should be wanting the price or prices hereinbefore mentioned, the same to be referred at the delivery of the same to the judgment of the said J. B. and M. H.: And the said B. in fact says, that he, confiding in the said promise and undertaking of the said A. hath permitted and suffered the said A. to hold, occupy, possess, and enjoy the said premises, (except as before excepted,) with the appurtenances, from the expiration of the said demise; and although the said A. hath accordingly had, held, occupied, and enjoyed the same, and hath paid to the said B. the yearly rent or sum of forty pounds for the use and occupation thereof, yet the said A. not further regarding his said promise and undertaking so made as aforesaid, but contriving, &c. the said plaintiff in this behalf, hath since the expiration of the term of nine years so demised as aforesaid, and on divers other days between that day and the commencement of this suit, cropped and lopped wood, to wit, one hundred ash trees, &c. so growing upon the said premises so occupied and enjoyed by the said A. as aforesaid, the said ash trees being other than the said ashes where the said A. designed to break ground out of Leigh, contrary to the form and effect of his said promise and undertaking, to wit, at, &c. And whereas the said A. on, &c. and long before, held of the said B. as his tenant, certain other tenements with the appurtenances, to wit, a certain other messuage and tenement of the said B. with its appurtenances, situate, lying, and being at H. aforesaid, as also certain other closes, inclosures of arable, woody, and pasture ground, situate, lying, and being at A. at C. aforesaid, with all other the hereditaments and appurtenances unto the said last mentioned messuage or tenements belonging or appertaining, or therewith usually held, occupied, possessed, and enjoyed,

toget-

together with eighty other heaf-bred and heaf-going sheep, of the sorts, kinds, numbers, and price following, that is to say, (as in the indorsement of the lease) excepting all the hall end of the dwelling-house at H. aforesaid, with two gardens adjoining thereto, and the orchard called the Great Orchard adjoining to the said gardens, with liberty to wash, bake, and brew, or heat the oven in the washhouse, bakehouse, or brewhouse, when and so often as he or they should have occasion; as also the new stable and cow-house, with the loft over them, and the pent-house under the corn-barn, and the field called Lime Lands, and the Pauve; and also liberty to dig, delve, and get peats in the Lyth Mos (as often as he or they should think proper so to do), for the residue of a term of nine years, commencing, to wit, as to the sheep, upon the thirtieth day of October 1745, as to the lands and grounds for husbandry from the second day of February in the same year, as to the eatage of the said lands and grounds from the fifteenth day of April 1746, and as to the house on the said premises, from the first day of May 1746. And whereas before the expiration of the same term, to wit, on the said eleventh day of October 1754, at the parish of C. aforesaid, in the county aforesaid, in consideration that the said B. at the like special instance and request of the said A. had then and there undertaken, and faithfully promised the said A. that he the said B. would permit and suffer the said A. to hold, occupy, and enjoy the said last mentioned premises with the appurtenances, (except as before excepted,) and also except the hog-close, and wood and south side of the wood in Brig House field, (parcel of the said last mentioned premises) from the expiration of the said term, for the term of three years, so to six, so to nine, at and under a certain yearly rent or sum to be therefore paid by the said A. to the said B. for the use and occupation thereof, he the said A. undertook, and then and there faithfully promised the said B. that he the said A. would not, during that time, crop, lop, or cut down any wood growing upon the said last mentioned premises so to be held and enjoyed by him (except the cropping of ashes where he should design to break ground out of Leigh); and that he the said A. would not, during that time, put or cause to be put any cattle into any of the springs, parcel of the said last mentioned premises: and the said B. in fact saith, that he, confiding in the said last mentioned promise and undertaking of the said A. hath permitted and suffered the said A. to hold, occupy, possess, and enjoy, the said last mentioned premises (except as last before excepted,) with the appurtenances, from the expiration of the said term of nine years, for the residue whereof the said A. held the said last mentioned premises as aforesaid hitherto: and although the said A. hath accordingly held, occupied, and enjoyed the same from thence hitherto, and still holds and enjoys the same; yet the said A. not regarding, &c. but contriving, &c. the said B. in this behalf, hath not, since the expiration of the said term of nine years, for the residue whereof the said A. held the said last mentioned premises as aforesaid, to wit, on, &c. and on divers other

other days and times between that day and the commencement of this suit, cropped and lopped wood, to wit, one hundred ash trees, &c. growing upon the said last mentioned premises so occupied by the said A. as last aforesaid, the said last mentioned ash trees being other than ashes where the said A. intended to break ground out of Leigh, contrary to the form and effect of his said promise and undertaking in this behalf made. And the said B. further saith, that the said A. on, &c. and on divers other days between that day and the commencement of this suit, did put, and caused to be put cattle, forty horses, forty mares, &c. into the springs, parcel of the said premises held by the said A. as last aforesaid, contrary to the form and effect of the said promise and undertaking of the said A. in that behalf made, to wit, at, &c. And whereas the said A. on, &c. and long before, held of the said B. as his tenant, a certain farm with the appurtenances, situate, lying at, &c. consisting of houses, lands, and sheep, for the residue of a term of nine years, commencing, to wit, as to the sheep, on, &c. as to the lands and tenements for husbandry, on, &c. and as to the vestage of the said lands and grounds, from, &c. And whereas before the expiration of the said term of nine years, for the residue whereof the said A. held the said farm as aforesaid, to wit, on, &c. at, &c. in consideration that the said B. at the like special instance and request of the said A. had then and there undertaken, and faithfully promised the said A. that he the said B. would permit and suffer the said A. to have, hold, occupy, possess, and enjoy the said farm with the appurtenances (except, &c.) from the expiration of the said term of nine years, for so long a time as the said B. and the said A. should please, at and under a certain yearly rent or sum to be therefore paid by the said A. to the said B. for the use and occupation thereof, he the said A. undertook, and then and there faithfully promised the said B. that during such time as the said A. should hold and enjoy the said farm, (except as before excepted,) with the appurtenances, by the permission of the said B. he the said A. would use and occupy the said farm in a husbandlike manner, and according to the good rules of husbandry: And the said B. in fact saith, that he, considering in the said promise and undertaking of the said A. hath permitted and suffered the said A. to hold, occupy, possess, and enjoy the said farm (except as before excepted,) with the appurtenances, for the expiration of the said term of nine years hitherto, and that the said A. hath, during that time, by the permission of the said B. accordingly held and enjoyed, and still holds and enjoys the same: Yet the said A. not regarding, &c. but contriving, &c. hath not, since the expiration of the said last mentioned term of nine years, hitherto used or occupied the said farm in a husbandlike manner, and according to the rules of good husbandry; but on the contrary thereof, the said A. after the expiration of the said last mentioned term of nine years, to wit, on, &c. at, &c. did wrongfully sow divers, to wit, fifty acres of land, parcel of the said farm, with oats, when the same ought to have been

been sown with barley, contrary to the rules of good husbandry, and did also, in an unhusbandlike manner, and contrary to the rules of good husbandry, keep and continue divers, to wit, fifty other acres of land, parcel of the said farm, in tillage, for a much longer time than he ought to have done, to wit, at, &c. whereby the said farm is greatly damaged and spoiled, and much diminished in value, to wit, at, &c. to the said B. his damage of eighty pounds; and therefore he brings his suit, &c.

J. WALLACE.

YORKSHIRE, to wit. Taylor White esquire v. W. Declaration against tenant at will for ploughing more than 100 acres of certain lands in each year, and for not throwing arable into four fields as near as might be, and not keeping each field in a succession of fallow, corn, clover, and wheat.

Wilson. For that whereas the said defendant heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would permit and suffer the said defendant to hold, occupy, and enjoy a certain farm, consisting of a messuage, and divers, to wit, three acres of land, with the appurtenances, situate and being at, &c. and divers, to wit, three hundred acres, with the appurtenances, situate and being at, &c.; and which said messuage and land, with the appurtenances, were then lately in the occupation of W. W. as tenant thereof to the said plaintiff, for and during the term of one whole year from thence next ensuing, and fully to be compleat and ended, and so from year to year, for so long a time as the said plaintiff and the said W. W. should please, at and under a certain yearly rent of one hundred and twenty pounds, payable therefore by the said W. W. to the said plaintiff; [“ That he “ would spend and spread on the said fallows, in the said last mentioned premises, all the manure arising of and from the said last “ mentioned premises during his possession thereof, and would “ not sell or take off or from the said premises any hay, &c. and “ that he would plough the fallows in each year three successive “ times, and lay manure thereon, and that he would not keep the “ lands in tillage successive years without manuring the same during his possession of the said last-mentioned premises with the “ appurtenances,”] be the said W. W. undertook, and then and there faithfully promised the said plaintiff, that he the said W. W. would not during the time that he should hold, occupy, and enjoy the said farm, messuage, and land, with the appurtenances, have under the plough more than one hundred acres of land, parcel thereof, then known by being late Brown’s and Turbill’s, and would throw such arable land into four fields in a succession of fallow, corn, clover, and wheat; and that in the year next before the quitting the said premises he would sow the field which, according to the afore-said course of husbandry, would be fallow the preceding year, with red clover-seed, at the rate of fourteen pounds to an acre, for which the said plaintiff, his heirs and succeeding tenants, was to pay; and that he the said W. W. would not convert a certain close called Merton Close into tillage during the possession of the premises, and that he would not take more than three crops from Tiding’s Close, and would forfeit and pay to the said plaintiff, his executors and

and assigns, the sum of five pounds an acre yearly for every year more than one hundred acres of the said lands then late Brown's and Turbill's, and for every acre of Merton's and Tiding's Close, which during his possession of the said premises should be ploughed, according to the said promise and undertaking in that behalf; and that he should spend the manure arising from the said premises yearly on the said premises, or some parts thereof, and that he would not during his possession of the said demised premises sell or take off from the said premises any hay, straw, fodder, or dung, but would spend or leave the same thereon. And the said plaintiff in fact says, that he, relying on the said promise and undertaking of the said W. W. did permit and suffer the said W. W. to hold, occupy, and enjoy the said farm, messuage, and lands with the appurtenances, and the said W. W. under and by the permission of the said plaintiff, did hold, occupy, and enjoy the said farm, messuage, and land with the appurtenances, for a long space of time, to wit, from the twenty-ninth day of March 1779, until the twenty-ninth day of March, A. D. 1783, to wit, at, &c: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, during the time he so held, occupied, and enjoyed the said farm, messuage, and lands with the appurtenances, to wit, in the several years of Our Lord 1780, 81, 82, had under the plough more than one hundred acres of the said lands late Brown's and Turbill's, to wit, fifty acres more than one hundred acres of the said lands in each and every of the said years; and did not in the several years of Our Lord 1780, 81, 82, or in any or either of them, throw the said arable lands into four fields, as nearly equal as might be, and keep each of those fields in a succession of fallow, corn, clover, and wheat; but, on the contrary thereof, wholly omitted and neglected so to do; and did not during the time he so held, occupied, and enjoyed the said farm, messuage, and lands with the appurtenances, as aforesaid, spend [in 2d Count, "and spread "on the fallow of the said last mentioned premises all"] the manure which had arisen of and from the said premises yearly on the said premises, or some part thereof, or leave the same thereon; but on the contrary thereof, during the said time, to wit, in the several years of 1780, 81, 82, and in each of them, did sell and take and "carry" off from the said premises divers large quantities of hay, straw, &c. [in 2d Count, "to wit, three hundred cart-loads of hay, &c. which had arisen upon and from the said last-mentioned premises in those several years; and did not in the "said A. D. 1782, plough the fallow of the said last-mentioned "premises in that year three successive times, and lay manure "thereon; but on the contrary thereof omitted and neglected so "to do, and only ploughed the said fallow in that year once, and "did not manure the same, and did during his said possession of the "said premises, to wit, in the said years 1781, 82, 83, keep divers, "to wit, one hundred acres of the said land successively in tillage "without manuring the same, to wit, at, &c."] in each and every of those years, which arose of and from the said premises, and was

was made thereon, to wit, on, &c. at, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that, &c. &c. (Finish this Count same as the first, only omitting what is in italic, and inserting what is within inverted commas.) And ^{3d} Count. whereas also, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would permit and suffer the said W. W. to hold, occupy, and enjoy a certain other messuage and farm lying and being at, &c. for and during the term of one whole year from thence next ensuing, and fully to be complete and ended, and so from year to year, for so long a time as the said plaintiff and defendant should please, at and under a certain yearly rent therefore, payable by the said defendant to the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff to occupy and use the said last-mentioned premises according to the due course of husbandry, during such time as he the said defendant should be possessed thereof: And the said plaintiff in fact saith, that he, relying on the said promise and undertaking of the said defendant last-mentioned, at, &c. in, &c. did permit and suffer the said defendant to hold, occupy, and enjoy the said last-mentioned premises with the appurtenances, for a long space of time, to wit, from the time of making the said last-mentioned promise and undertaking, until the twenty-fifth day of March 1783, to wit, at, &c. in, &c.: Yet the said defendant, not regarding, &c. but contriving, &c. in this behalf, did not, during the time he held and enjoyed the said last-mentioned premises as aforesaid, occupy the same in a husbandlike manner, according to the due course of husbandry; but on the contrary thereof he the said defendant, during the time he held and enjoyed the said last-mentioned premises, occupied the same in an unhusbandlike manner, and contrary to the due course of husbandry, during that time, to wit, the said defendant did, during his possession of the said last-mentioned premises, till and sow divers, to wit, one hundred acres of land of the said last-mentioned premises, without couching, cleaning, dressing, or manuring the same land, contrary to the due course of husbandry, and contrary to the form and effect of the said promise and undertaking of the said defendant so by him made as last aforesaid; and did plough and break up divers other, to wit, one hundred other acres of land of the said last-mentioned premises, contrary to the due course of husbandry, and which ought not, according to the rules of good husbandry, to have been ploughed and broken up; and broke up divers, to wit, one hundred other acres of fallow ground of the said last-mentioned premises, and sowed the same with corn and grain, without ploughing the same three times before sowing the same with corn and grain, contrary to the due course of husbandry: and the said defendant, during the time he so held and enjoyed the said last-mentioned premises as last aforesaid, did not use, spend, spread, bestow, and employ all the hay, straw, fodder, dung, or compost, or any part thereof, ariling, coming, growing, and renewing in and upon the said last-mentioned

4th Count.

tioned premises, or any part thereof, in and about the improving and manuring the same, nor did leave all the hay, straw, &c. of any part thereof, in and upon the said last-mentioned premises, or upon any part thereof, at the end or expiration of the time he so held the said last-mentioned premises as last-*aforsaid*, and when he quitted the same, according to the due course of husbandry; but on the contrary thereof, during all the time he so held and enjoyed the said last-mentioned premises, and at the end and expiration of the time he so held and enjoyed the same, took and carried away divers large quantities of hay, straw, &c. to wit, one hundred cart-loads of, &c. which had arisen, grown, and renewed in and upon the said last-mentioned premises, to other places, and disposed of the same elsewhere than on the said last-mentioned premises, to wit, at, &c. *And whereas* also, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special, &c. of the said defendant, would permit and suffer the said defendant to hold, occupy, and enjoy a certain other messuage and farm with the appurtenances, lying and being at, &c. for and during, &c. from thence next ensuing, &c. and so from year, &c. at and under a certain yearly, &c. he the said defendant undertook, &c. the said plaintiff, that during the time he should so hold and enjoy the said last-mentioned premises, he should not till and sow any part of the said last-mentioned lands with corn, without dressing, cleaning, and manuring the same, and that he would not plough or break up any ley-ground of the said last-mentioned lands out of the due course of husbandry, and which ought not, according to the rules of good husbandry, to be ploughed and broke up; and that during the time last *aforsaid* he the said defendant would not plough or break up the fallow-ground of the said last-mentioned land, and sow the same with corn and grain; and that he the said defendant would not during the time last *aforsaid* carry off any hay, &c. arising, coming, growing, and renewing in and upon the said last-mentioned premises, in and about the improving and manuring thereof, and would leave all the hay, &c. which should be in and upon the said last-mentioned premises at the expiration of the time he should so hold and enjoy the said last-mentioned premises, in and upon the same: And the said plaintiff in fact lays, that he, relying on the said last-mentioned promise and undertaking of the said defendant so by him made as last *aforsaid*, afterwards, to wit, on, &c. at, &c. did permit and suffer the said defendant to hold, occupy, and enjoy the said last mentioned premises with the appurtenances, for a long space of time, to wit, from the time of the making of, &c. until, &c.: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, during the time he so held and enjoyed the said last mentioned premises with the appurtenances as last *aforsaid*, to wit, on, &c. before the quitting possession thereof, did till and sow divers, to wit, one hundred acres of land of the said last-mentioned premises, without dressing, cleaning, or manuring the same land, contrary to the said promise and undertaking so by him made

made as last aforesaid; and did in the several A. D. &c. and before the quitting the possession of the said last-mentioned premises as last aforesaid, plough and break up divers, to wit, one hundred acres of ley-ground of the said last-mentioned premises, contrary to his said last-mentioned promise and undertaking by him made as last aforesaid, out of the due course of husbandry, and which ought not, according to the rules of good husbandry, to have been ploughed or broke up in those years; and did break up divers, to wit, one hundred acres of fallow ground of the said last-mentioned premises, and sowed the same with corn and grain, without ploughing the same three times before the sowing of the same with corn and grain, contrary to his said last-mentioned promise and undertaking so by him made as last aforesaid; and did not, during the time he so held and enjoyed the said last-mentioned premises as last aforesaid, use, spend, bestow, or employ all the hay, &c. or any part thereof, which grew, arose, and renewed, during the time he so held and enjoyed the said last-mentioned premises, upon the said last-mentioned premises, or any part thereof, in and about the improving and manuring the same; and did not, at the time of his quitting the said last-mentioned premises, leave all or any part of the hay, &c. which had so arisen, grown, and renewed as last aforesaid, upon the said last-mentioned premises, or any part, according to his said last-mentioned promise and undertaking in that behalf made; but on the contrary thereof, during the time he so held and enjoyed the said last-mentioned premises, and at the time of quitting the same, took and carried, and caused and procured to be taken and carried away divers large quantities of hay, &c. to wit, one hundred cart-loads of, &c. which had arisen, grown, and renewed in and upon the said last-mentioned premises during his occupation and enjoyment thereof as last aforesaid, to other places, and disposed of the same elsewhere than on the said last-mentioned premises, to wit, at, &c. (Add the money Counts.)

THO. DAVENPORT.

I Have perused and approve of this declaration, but think a verdict ought not to be taken on the third Count.

THOMAS WALKER.

If the plaintiff is driven to his third Count for want of proof on the others, he must risk his verdict on that Count.

THOMAS DAVENPORT.

DEVONSHIRE, to wit. William S. esquire complains of J. P. Batten, being, &c. for that whereas, on the fourth of March 1780, at the parish of Topsham in the county of D. in consideration that the said William, at the special instance and request of the said J. had demised, set, and to farm let to him the said J. a certain part of the Barton of Wear in the said parish of T. in the county aforesaid, then in the possession of one James Dairy, containing one hundred and ninety-one acres, of the yearly rent of two hundred and eighty pounds, for the term of fourteen or

By the Landlord against Tenant for not using the estate in a good husbandlike manner, and not yielding it up in a good husbandlike condition at the end of the term, with several special

breaches of the implied promise to use the estate according to good husbandry.

twenty=

(1) In the 2d Count, that he the said William would.
(2) would pay, in the 2d Count.

twenty-one years, from the twenty-ninth day of September then next subsequent, to determine the same at the end of the first five years, giving the said William two years notice thereof in writing; and had undertaken, and to the said John then and there faithfully promised (1) to repair all the premises, and pay and discharge the king's, church and poor rates, in respect of the said estate, and (2) to pay for every parish apprentice, and also would put into proper repair all the banks round the marshes near the river, which were afterwards to be repaired at the joint expence of the said William and John, and would also fit up in a convenient manner the house opposite the farm yard, having, as a consideration for so doing, all the old furniture and buildings then adjoining, with the little garden thereto belonging, he the said John undertook, and to the said William then and there faithfully promised to use the said premises with the appurtenances so demised to him as aforesaid, in a good husbandlike manner, during the time that he should hold the same as tenant thereof to the said William, and also to yield and deliver up the same to the said William in an husbandlike condition, at the expiration or determination of the said term; and also that he the said John, during the time last aforesaid, would jointly with the said William, and at their joint expence, repair the said banks, the same having been first put into proper repair by the said William as aforesaid: And the said William in fact says, that the said John held and enjoyed the said premises with the appurtenances, by virtue of and under that demise, for a long space of time, to wit, from the said twenty-ninth of September in the year aforesaid, until the twenty-ninth of September A. D. 1785, being the end of the first five years of the said term, and at that last-mentioned time quitted the possession of the said premises with the appurtenances, he the said John having given the said William two years previous notice in writing of such intention so to do, and that the said term should then be determined, whereby the said term was determined accordingly on the day and year last aforesaid. And the said William further saith, that although he the said William did, according to his said promise and undertaking, repair all the said premises, and pay and discharge the king's, church and poor rates, in respect of the said estate, and pay for every parish apprentice two guineas; and did also, after the making of the said promise and undertaking, to wit, on the first of August 1780, at the parish aforesaid, put the said banks into proper repair, and also fit up in a convenient manner the said house opposite the farm-yard: Yet the said John, not regarding his said promise and undertaking by him made as aforesaid, but intending to deceive and defraud the said William in this behalf, *did not use the said premises with the appurtenances, during his said possession thereof, in a good husbandlike manner, nor yield and deliver up the same to the said William in a good husbandlike condition, when he quitted the possession thereof as aforesaid on the determination of the said term, according to his said promise and undertaking in that behalf made with the said William; but on the contrary, that the said*

Breach 1st.

said John, during the time that he did hold and enjoy the said premises with the appurtenances as aforesaid, that is to say, in the several years of Our Lord 1781, &c. to wit, on the first day of June in each of those years, at the parish aforesaid in the county aforesaid, *mowed and cut the grass* arising and growing on divers; to wit, fifty acres of and belonging to the said demised premises, *without laying any quantity of manure or dressing* whatsoever thereon, or any part thereof, in any or either of the said years; and did also, in each of those years, *mow and cut the grass* arising and growing on divers, to wit, fifty other acres of and belonging to the said demised premises, *without laying proper and sufficient dressing thereon*; or any part thereof; and did also, in each of these years, plow, till, and sow divers, *ff. fifty acres* of said demised premises, without laying any quantity of manure or dressing whatsoever thereon, or on any part thereof; and *did also plow, till, and sow divers, ff. fifty other acres* of and belonging to the said demised premises, *without laying proper and sufficient dressing on any part thereon*, or any part thereof; contrary to good husbandry, and the form and effect of the said promise and undertaking in that behalf made as aforesaid. And the said William further says, that during the time that the said John so held the said premises with the appurtenances as aforesaid, to wit, on the thirtieth of September A. D. 1780, and on divers other days and times between that day and the said determination of the said term of the said John; the said John *laid and placed a large quantity of untwobolefome and improper dressing in and upon* divers, to wit, fifty other acres of and belonging to the said demised premises, contrary to good husbandry, and the form and effect of the said promise and undertaking in that behalf made as aforesaid, whereby the same were and still are greatly corrupted, injured, and filled and choaked with weeds: and the said William, from the said determination of the said term hitherto, hath been wholly deprived of all the use, profit, and advantage which he otherwise would have derived from the said premises, *ff. at the parish aforesaid in the county aforesaid*. And the said William further says, that during the time the said John held the said premises with the appurtenances as aforesaid, to wit, on the said thirtieth day of September A. D. 1780, and on divers other days and times between that day and the said determination of the said term of the said John, he the said John, contrary to good husbandry, and to the form and effect of his said promise and undertaking in that behalf, *permitted and suffered divers, ff. fifty acres of the said demised premises to be greatly over-run and choaked with weeds*, for want of reasonable care and good husbandry in the said John in that behalf, and also *permitted and suffered the same to continue so over-run and choaked with weeds* as aforesaid, for a long space of time, *ff. from the said last-mentioned day and year until the said determination of the said term of the said John; and yielded and delivered up the same so over-run and choaked with weeds* as aforesaid, in a bad and unhusbandlike condition, to the said William at the said determination of the said term

Breach 2d.

Breach 3d.

Breach 4th.

Breach 5th.

Breach 6th.

as aforesaid, contrary to the form and effect of his said promise and undertaking in that behalf made as aforesaid. *ff.* at the parish aforesaid in the county aforesaid: And the said William further says, that during the time that the said John held the said premises with the appurtenances as aforesaid, to wit, on the said thirtieth day of September A. D. 1780, and on divers other days and times between that day and the said determination of the said term of the said John, he the said John *cut and felled divers, to wit, twenty perches of underwood* in and upon the said premises, *when the same was not in a due course of cutting*, and carried away, sold, and disposed of the same off the said demised premises with the appurtenances, contrary to good husbandry, and the form and effect of the promise and undertaking in that behalf made as aforesaid. And the said William further says, that during the time the said John held the said premises with the appurtenances as aforesaid, to wit, in the several years of Our Lord, &c. &c. that is to say, on the first day of March in each of these years, he the said John *ploughed up, sowed, and converted to tillage divers, to wit, fifty acres of ancient pasture* of and belonging to the said demised premises, contrary to good husbandry, and the form and effect of his said promise and undertaking in that behalf made as aforesaid. *ff.* at the parish aforesaid in the county aforesaid. And the said William further says, that during the time that the said John held the said premises with the appurtenances as aforesaid, *ff.* on the said thirtieth of September A. D. 1780, and on divers other days and times from that day and the said determination of the said term of the said John, he the said John *fed and depastured divers other, ff.* thirty acres of the *orchards* of and belonging to the said demised premises, with horses, cows, and oxen, contrary to good husbandry, and the form and effect of the said promise and undertaking in that behalf made as aforesaid; *wherby* divers, *ff.* about four hundred *apple trees*, then growing and being in the said orchard, were *barked*, subverted, pulled down, and otherwise *injured* by the said horses, cows, and oxen, and at the said expiration of the said term be and were of little or no use or value to the said William, *ff.* at the parish aforesaid in the county aforesaid. And the said William further says, that the said John *did not*, during the time that he held and enjoyed the said premises, in a good husbandlike manner *spend, use, employ, and bestow* in and upon the said premises, or any part thereof, the said hay, straw, or fodder, muck, dung, compost, and *manure* which was made and gathered upon the said premises during the said time that he so held the said premises with the said appurtenances, or *leave the same* upon the said premises at the time *when he quitted* the same as aforesaid, as he ought to have done, according to good husbandry, and according to his promise and undertaking in that behalf made as aforesaid; *but*, on the contrary thereof, the said John, during the time that he so held and enjoyed the said premises with the appurtenances, *ff.* on the thirtieth of September A. D. 1780, and on divers other days and times between that day and the said determination of his term,

Breach 7th.

Breach 8th.

Breach 9th.

at

at the parish aforesaid in the county aforesaid, *did take and carry away from the said premises divers large quantities of hay, straw, fodder, dung, muck, compost, and manure; ff. five hundred cart-loads of hay, five hundred cart-loads, &c.* which, during the time that the said John so held and enjoyed the said premises with the appurtenances, were made and gathered upon the said premises, contrary to good husbandry, and to the form and effect of his said promise and undertaking in that behalf made as aforesaid. And the said William further says, that during the time that the said John held the said premises with the said appurtenances as aforesaid, to wit, on the first day of February A. D. 1781, and on divers other days and times between that day and the said determination of the said term of the said John, the said banks of and belonging to the said premises round the marshes near the river, were greatly in decay and out of repair, whereof the said John, at the parish aforesaid, had notice, and was then and there requested by the said William to repair the same, together with the said William, at and with their joint expence; but the said John then and there wholly refused and omitted, and did afterwards wholly omit so to do, contrary to the form and effect of his said promise and undertaking in that behalf made as aforesaid; whereby the said William was obliged to lay out and expend; and did actually lay out and expend, a large sum of money, to wit, the sum of four hundred pounds, in and about the necessary repairing of the said banks, at his own sole expence; *ff. at the parish aforesaid in the county aforesaid.* (2d Count as with the alteration in the margin only. 3d Count, money laid out and expended. 4th, Account stated. Breaches to the last Counts. The breaches to the first two Counts are in italic.)

V. GIBBS.

LANCASHIRE, *ff.* William Greenwood, late of, &c. was attached to answer unto John Midgley and Thomas Smith in a plea of trespass on the case, &c. and thereupon, &c. for that whereas the said plaintiffs, on the thirteenth of January A. D. 1742, were lawfully possessed of and in two barns, situate, &c. called, &c. and four closes of land called and known by the name of, &c. situate, &c. containing, &c. with the appurtenances, for the residue of a certain term of twenty-three years, commencing from and immediately after the twenty-fifth of March A. D. 1726 then to come and unexpired, by virtue of a certain demise or grant thereof before then duly made to one Robert Banister, and duly vested in the said plaintiffs by assignment; by which demise or grant the said Robert and his assigns were amongst other things obliged to spread and expend upon the said premises all the hay, straw, manure, dung, compost, and ashes which should yearly come, grow, be gotten, bred, or increased upon the said premises, yearly and every year during the said term, and were restrained from ploughing, grazing, or riving up, or sowing with corn, grain, or any other thing, a certain close called Swan's Meadow,

For money promised plaintiff if defendant did not spend hay on premises which plaintiff had demised to him.

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part of the said premises above described by the name of the Swain's Field, or any part thereof; or the said close called, &c. or any part thereof, for two of the last years of the said term; and being so thereof possess'd, afterwards, to wit, on the said thirteenth day of, &c. at Colne aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there demised the said premises with the appurtenances to the said defendant, to hold the same from the twenty-fifth of March then next following for one year then next ensuing, and so from thence from year to year for so long a time as the said plaintiff and defendant should please, at and under a certain yearly rent to be therefore paid by the said defendant to the said plaintiffs, he the said defendant undertook, &c. to pay to them the full and just sum of ten pounds in case the said defendant should not, during all that time as he the said defendant should hold and enjoy the said premises with the appurtenances, under and by virtue of the said demise, spend all the hay, straw, manure, dung, and ashes that should during such time come or grow upon the said premises; and also that he the said defendant would not plough or rive any of the ground of the said close called S. M. or of any of the said closes called, &c. in two of the last years of the said term of twenty three years. And the said plaintiffs aver, that the said defendant, by virtue of the said demise, afterwards, to wit, on the twenty-fifth day of March A. D. 1743, entered into all and singular the said demised premises with the appurtenances, and was thereof possess'd from thence until the end and expiration of the said term of twenty three years, to wit, at, &c. aforesaid; and that the said defendant did not during that time spend all or any part of the hay, straw, manure, dung, and ashes, which during that time came or grew upon the said demised premises; but on the contrary thereof, during that time spent a great part elsewhere than on the said demised premises, to wit, at, &c. aforesaid: Yet the said defendant, not regarding his said promises, &c. (Common conclusion for the ten pounds.)

J. YATES.

Declaration in
assumpsit upon
a parol agree-
ment for letting
a farm and 101
sheep thereon
for seven years,
at several rents
for each. De-
fendant held for
three years and
then quitted,
but did not re-
turn all the
sheep.

LANCASHIRE, ss. John Shaw, late of in the county of Lancaster, was attached to answer Thomas North of a plea of trespass upon the case; and whereupon the said Thomas, by A. B. his attorney, complains, for that whereas heretofore, to wit, on the nineteenth day of October in the year of Our Lord 1784, at the parish of Melling, in the county of Lancaster, the said Thomas, at the special instance and request of the said John, did demise, lease, and let to the said John, and the said John did then and there take of the said Thomas a certain farm there situate, consisting of a messuage or dwelling-house and other buildings, and divers, to wit, sixty acres of land with the appurtenances, together with one hundred and one sheep of the respective kinds, and to be taken at the respective values following, that is to say, thirty best ewes at nine shillings each, eighteen hogs at four shillings and

and six pence each, seventeen twinter gimmers, or two years old ewes, at seven shillings each, twelve twinter or two years old wethers at six shillings and six-pence each, ten aged wethers at eight shillings each, ten aged ewes at six shillings each, three old ewes at four shillings and six-pence each, and one tupper ram at sixteen shillings, then being in and upon the said farm and lands, to hold the said demised premises with the appurtenances, unto the said John, his executors, administrators, and assigns, from the thirteenth day of February then next as to the lands, and from the twelfth of May then next as to the buildings, for, during, and unto the full end and term of (1) "three" years from thence next ensuing, and fully to be complete, ended (2); yielding and paying therefore yearly and every year during the said term, unto the said Thomas, the yearly sum of fifty-two pounds ten shillings of lawful money of Great Britain, by equal half yearly payments, on the first day of August and the first day of February in each year, the first half-yearly payment to begin and be made on the first day of August next ensuing the commencement of the said demise; and also eight-pence a-piece for each and every of the said one hundred and one sheep, or the yearly sum of three pounds one shilling and four pence in each and every year of the said term for the whole of the said stock of sheep collectively: and it was also then and there (3) further agreed between the said Thomas and the said John, that the said John should and would redeliver to the said Thomas at the end, "or other sooner determination," of the said term, the whole of the said stock of one hundred and one sheep, or should and would well and truly pay to the said Thomas for each and every of the said sheep that he the said John should not redeliver to the said Thomas at the expiration, "or other sooner determination," of the term, at and after the rate at which the same were respectively valued and taken, according to the different kinds thereof as aforesaid; and it was further then and there agreed by and between the said Thomas and the said John, that the said John should and would lay on the said premises, in each of the first two years (4) *of the said term*, eight hundred loads of lime, one-half whereof the said Thomas was to pay for at the lime-kiln; and that in *each* of the four, "the third year," *next succeeding years* (5) that the said John should hold and occupy the demised premises under the said demise *of the said term*, he the said John should and would lay on some part of the said premises three hundred loads of lime at his own expence, *and should and would in the last year of the said term lay on the said premises four hundred loads of lime, one-half to be paid for by the said Thomas at the kiln*: and it was further then and there agreed by and between the said Thomas and the said John, that the said John should and would keep all the said demised houses in good repair, with all materials (main walls and main timbers only excepted); *and that he the said John should and would serve all offices liable to be served and performed, for or in respect of the said demised premises, during the said term, and should not, nor would plough any part*

(1) one whole year.

(2) and so from year to year at the will of the said Thomas and John,

(3) amongst other things,

(4) that he the said John should continue in the said demised premises under the said demise, (5) that he the said John should hold and occupy the said demised premises under the said demise,

of the mowing-ground of the said demised premises during the said term; and that he the said John should and would, during the said term, keep all the fences in and upon all the said demised premises in good repair, so that no cattle should go through any part of the same, but through the cart-gaps or rails only, and should and would keep all drains, watercourses, and ditches, in and upon the said demised premises, in all needful repair during the said term, and leave them so at the end, or other sooner determination thereof: and it was then and there further agreed by and between the said Thomas and the said John, that the said John should and might plough the two high timber-lays and one field in the low ground the first two years in the said term, and no longer, at one time, and then the low timber-lays and one field in the low ground two years at one time, and of the new inclosures as much as he should lime in each year; and that he the said John should pay all the assessments, one-third of which the said Thomas should allow: and it was then and there further agreed by and between the said Thomas and the said John, that he the said John should make all the fences leading to his landlord's premises during the said term, and should not nor would at any time during the said term, hinder the said Thomas North, or his agents or assigns, felling any timber or other wood upon the demised premises, for coaling or other uses, he or they paying reasonable damage for the same, and carrying away the same; and that he the said John should not nor would at any time during the said term, cut down, crop or lop any oak, ash, or other wood, but such as is usual to cut for hedging-wood, without the forfeit of five pounds a-tree; and that the said John should not have, as the landlord, reserved to himself the little nursery at the bottom of the great meadow; and that the said John should not assign, lease, set, or demise any part of the said demised premises, during the said term, to any person or persons whatsoever, without the license or consent of the said Thomas; and that the said John should spend in the premises all the vestures that should be produced thereon during the said term, and cut all the hedges thereon at seasonable times of the year during the said term; and, lastly, it was then and there agreed, that the cows upon the said estate should be at the sole disposal of the said Thomas: and the said agreement being so made as aforesaid, he the said Thomas, at the special instance and request of the said John, undertook and faithfully promised the said John well and truly to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and in consideration thereof, he the said John undertook, and faithfully promised the said Thomas to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled: And the said Thomas avers, that the said John afterwards entered into all and singular the said demised premises with the appurtenances, that is to say, at Candlemas next after the making the said agreement, as to the lands, and on the twelfth day of May next following as to the buildings, according to the tenor and effect of the said agreement, and was there-

of

of possessed, as well as of the said one hundred and one sheep then being in and upon the same, and so remained and continued for a long time, to wit, for the "whole of the said term next ensuing the commencement of the said demise," *space of three years of the said term, when he quitted and left the said demised premises, and determined the said term.* And the said Thomas further says, that he the said Thomas always, from the time of the making and entering into the said agreement, hath well and truly performed and fulfilled, *and hath been ready and willing to perform and fulfil* all things therein contained on his part and behalf to be performed and fulfilled: Yet the said Thomas in fact says, that although the said John did, in the first year of the said term, lay on the said demised premises four hundred loads of lime, (which he the said Thomas, in full performance of the said agreement in that behalf, paid for at the lime-kiln, being one half of the said eight hundred loads of lime so agreed by the said John to be laid by him upon the said premises within the first two years of the said term,) according to the tenor of the said agreement, he the said John, not regarding the residue of his said agreement, nor his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this behalf, did not nor would, during the said residue of the said term he so held and enjoyed the said premises, lay thereon the said several quantities of lime so by him by the said agreement stipulated to be laid thereon as aforesaid, or any part thereof, nor did nor would he the said John keep all or any part of the said demised housing, and the fences, drains, watercourses, and ditches in and upon the said demised premises, in needful repair, during *such part of the said demised term as he so held them,* and leave them so "at the end thereof," when he so quitted the same as aforesaid, (although often requested so to do,) but wholly refused so to do, and therein wholly failed and made default; on the contrary thereof, the said demised housing, "at the end of the said term, and" at the time he the said John so quitted and left the same as aforesaid, were ruinous and in great decay, (other than in the main walls and timbers,) to wit, in the roofs, plaister, wainscots, windows, floors, joists, and various other parts thereof; and the fences, drains, watercourses, and ditches "in and upon the same at the end of the said time," at the time the said John quitted the said demised premises as aforesaid, were ruinous, broken down, filled, and choaked up, and in great decay for want of needful and proper repairs, contrary to the tenor and effect of the said agreement. And the said Thomas further says, that although the said John, "at the end of the said term," *when he so quitted and left the said demised premises, and determined the said term therein as aforesaid,* delivered up to the said Thomas a part, to wit, eighty-nine of the said stock of one hundred and one sheep so being upon the said demised premises, and taken by the said John therewith as aforesaid; and though the said John then and there was requested, and ought to have delivered the residue thereof, being four hogs, eleven

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twinter wethers, and four aged wethers, or to have then and there paid for such residue to the said Thomas, at and after the rate of four shillings and sixpence per each and every of the said remaining hogs, six shillings and sixpence for each and every of the said eleven remaining twinter wethers, and eight shillings for each and every of the said remaining four aged wethers, amounting to a large sum of money, to wit, the sum of six pounds one shilling and sixpence in whole, according to the tenor and effect of the said agreement, and the said promise and undertaking of the said John in that behalf made as aforesaid: Yet the said John, further disregarding his said agreement, and his said promise and undertaking in that behalf made as aforesaid, did not nor would not, "at the end of the said term," *when he so quitted the said demised premises*, and when he was so requested as aforesaid, deliver to the said Thomas the residue of the said stock of sheep, or any part thereof, or pay to the said Thomas the said six pounds one shilling and sixpence for the same, or any part thereof; but then and there wholly refused so to do; and the said residue are still wholly undelivered, and the said sum of six pounds one shilling and sixpence still wholly unpaid to the said Thomas, contrary to the form and effect of the said agreement, and of his said promise and undertaking so by him made as aforesaid; to wit, at the parish first aforesaid, in the county aforesaid. (2d Count upon a demise for three years, according to the alterations within inverted commas and in italic. 3d Count upon a demise for one year, and so from year to year at the will of the parties, according to the alterations in margin. 4th and 5th Counts for sheep and other goods, &c. sold and delivered. 6th, Money laid out; 7th, had and received; 8th, account stated; and common conclusion.)

T. BARROW.

Declaration by
landlord against
his tenant at will,
for not keeping
buildings in ten-
nantable repair,
and cultivating
and managing
lands according
to the course of
husbandry in the
parish.

YORKSHIRE, ss. The right honourable William Wentworth, earl Fitzwilliam, complains of John Johnson, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, for this, to wit, that whereas the said earl heretofore, to wit, on the second day of February A. D. 1786; at the parish of Wath-upon-Dern, in the county of York, at the special instance and request of the said John, demised to the said John a certain farm, consisting of a messuage, fold-yard, barn, stable, and other out-buildings, and divers, to wit, ninety-six acres of land or ground, with the appurtenances, at Hoyland, in the parish aforesaid, to hold the said premises unto the said John, from the second day of February in the year last aforesaid, for and during the space of one year, and so from year to year, so long as both parties should please, at and under a certain yearly rent therefore payable by the said John to the said earl; and thereupon in consideration thereof, he the said John undertook, and then and there fully promised the said earl, to repair and amend from time to time as occasion should require, during the continuance of the said demise, all and every the buildings, barns, stables, and out-houses upon

upon the said premises, in, by, and with all needful and necessary tenantable reparations and amendments; and that he the said John should and would use, cultivate, and manage the said demised land, during the continuance of that demise, according to the usual course of husbandry used and practised in other farms of the like nature in the said parish and the neighbourhood thereof; by virtue of which said demise the said John afterwards, on the third day of February in the year aforesaid, entered into the said demised premises with the appurtenances, and became, and was, and from thenceforth hitherto hath been, and still is, possessed thereof, the said demise still continuing: Yet the said John, not regarding his said promise and undertaking, but contriving, &c. craftily, &c. the said earl, *hath not*, during his said possession and holding of the said farm, from time to time, as occasion required, repaired and amended all and every the buildings, barns, stables, and out-houses upon the said premises, in, by, and with all needful and necessary tenantable reparations and amendments, according to his said promise and undertaking; but on the contrary hath permitted and suffered, and still permits and suffers, the said buildings, barns, stables, and out-houses to be and remain ruinous, broken, and in great decay, for want of needful and necessary tenantable reparations and amendments, contrary to his said promise and undertaking x. And the said earl further says, that the said John *hath not*, during the said possession and holding of the said farm, used, cultivated, and managed the said demised lands according to the usual course of husbandry used and practised in other farms of the like nature in the said parish and the neighbourhood thereof, according to his said promise and undertaking; but on the contrary thereof, the said earl says that the said John, in the year of Our Lord 1788, *ploughed up*, and caused to be ploughed up, divers large quantities, to wit, thirty acres of *grass land*, part of the said farm, and *sowed the same*, to wit, one part with *linseed*, and other part thereof with *oats*, contrary to the usual course of husbandry used and practised in other farms of the like nature in the said parish and neighbourhood thereof, and contrary to his said promise and undertaking. And the said earl further says, that the said John, in the said year of Our Lord 1789, *ploughed up* and *sowed* with *linseed* another large quantity, to wit, sixteen acres, other part of the said farm, contrary to the usual course of husbandry used and practised in other farms of the like nature, in the said parish and neighbourhood thereof, contrary to his said promise and undertaking. And the said earl further says, that the said John, in the said several years of Our Lord 1788 and 1789, *sowed the whole of the tillage land* of the said farm, consisting of divers, to wit, eighty acres, with *corn* or grain, *without making any fallows therein*, contrary to the usual course of husbandry used and practised in other farms of the like nature, in the said parish and neighbourhood thereof, and contrary to his said promise and undertaking. And the said earl further says, that the said John *did not lay* and

For ploughing up and sowing land, part with linseed, part with oats.

For sowing tillage land with corn, without making fallow.

For not laying manure bred on

the farm, but carrying it to be carried off and used elsewhere.
spread

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spread upon the said demised lands, for the improvement and cultivation thereof, the *dung and manure bred upon the said farm* in the years of our Lord 1788 and 1789, according to the usual course of husbandry used and practised in other farms of the like nature, in the said parish and neighbourhood thereof; *but on the contrary thereof, caused such dung and manure, as well as the straw of the crops grown upon the said farm, to be conveyed and carried away from the said farm, to be used elsewhere than on any part of the said farm, contrary to the usual course of husbandry used and practised in other farms of the like nature, in the said parish and neighbourhood thereof, and contrary to his said promise and undertaking.* [2d Count like the first, except that defendant should cultivate, &c. *in a reasonable course of husbandry*, and breaches similar to the first. 3d Count, should repair with all needful and necessary reparations and amendments, as in the first Count to this mark x; then go on thus.] And the said earl further says, that the said John, at the making of the said last mentioned demise, and in consideration thereof, to wit, on the second day of February A. D. 1786, at the parish of Wath-upon-Dern aforesaid, undertook, and then and there faithfully promised the said earl, that he the said John would not, during the continuance of the said demise, plough up, or sow with linseed, or corn, or grain, any of the grass land of and belonging to the said farm: Yet the said John, not regarding his said last mentioned promise and undertaking, but contriving, &c. craftily, &c. the said earl, did, A. D. 1788, plough up a great part, to wit, twenty-four acres of grass land, of and belonging to the said farm, and did sow the same, to wit, part thereof with linseed, and the residue thereof with corn, contrary to his said promise and undertaking. And the said earl further says, that the said John, at the making of the said last mentioned demise, and in consideration thereof, to wit, on the second day of February A. D. 1786, at the parish of Wath-upon-Dern aforesaid, undertook, and then and there faithfully promised the said earl, that he the said John would not, during the continuance of the said demise, plough the whole of the tillage land of the said farm in any year, but each year to lay down in fallow a reasonable proportion of such tillage lands: Yet the said John, not regarding, &c. but contriving, &c. craftily, &c. the said earl, did, in the years of Our Lord 1788 and 1789, plough up the whole of the tillage land of the said farm, contrary to his said promise and undertaking, and did not lay down in fallow a reasonable proportion of the said tillage land, according to his said promise and undertaking. And the said earl further says, that the said John, at the making of the said last mentioned demise, and in consideration thereof, to wit, on the second of February A. D. 1786, at the parish of W. upon Dern aforesaid, undertook, &c. the said earl, to lay and spread all the dung and manure bred upon the said farm upon the said demised lands, or some part thereof, for the improvement and better cultivation thereof, during all the time that the said John should so hold and enjoy the same: Yet the said John, not regarding, &c. but contriving, &c. craftily, &c. the said

said earl, hath not laid and spread upon the said demised lands, for the improvement and better cultivation thereof, the dung and manure bred upon the said farm in the years of Our Lord 1787 and 1788, according to his said promise and undertaking; but, on the contrary thereof, hath caused such dung and manure to be conveyed and carried away from the said farm, and to be used elsewhere than on any part of the said farm, contrary to his said promise and undertaking. And the said earl further says, that the said John, at the making of the said last mentioned demise, and in consideration thereof, to wit, on the said second of February A. D. 1786, at the parish of W. upon Dern aforesaid, undertook, and then and there faithfully promised to the said earl, that he would not convey away or carry off the straw of the crops grown upon the said farm, from off the said farm, during all the time that he the said John should so hold and enjoy the same: Yet the said John, not regarding, &c. but contriving, &c. craftily, &c. the said earl, hath, in the years of Our Lord 1788 and 1789, conveyed away and carried, and caused to be conveyed and carried, large quantities of the straw of the crops grown upon the said farm, from off the said farm, contrary to his said promise and undertaking, to wit, at the parish aforesaid, in the county aforesaid. Wherefore the said earl says he is injured, and hath sustained damage to the value of one thousand pounds; and therefore he brings his suit, &c. Pledges, &c.

GEO. WOOD.

LANCASHIRE, ff. Thomas Lalthorne complains of Richard Ruffel, &c. for that whereas on the tenth day of December in A. D. , at Preston in the county aforesaid, it was agreed by and between the said Richard and the said Thomas, that the said Richard let to farm, and the said Thomas took to farm of the said Richard, a certain farm called Carr Stowe of the said Richard, consisting of a messuage and divers acres of land with the appurtenances, situate, lying, and being at in the county aforesaid, to hold the same of the said Richard, from the feast of the Purification of the blessed Virgin Mary then next following, for and during, and unto the full end and term of ten years then next ensuing, and fully to be complete and ended, if the said Thomas should think fit so long to hold the same; and that the said Thomas should be at liberty to end and determine the said agreement, and the term of his holding the said farm, at the end of any of those ten years, if he should think it fit so to do; and that the said Thomas should in every year that he should hold the said farm, by virtue of the said agreement, plough as much of the lands thereof as he should think fit; and that the said Thomas should pay for the use and enjoyment of the said farm under the yearly rent of forty-seven pounds; and that, whensoever the said Thomas should determine the said agreement, and the said term of his holding the said farm, be the said Thomas should, at the harvest then next following, quietly reap and take away two-third parts of all such summer-

Declaration in B. R. in special assumpsit on an agreement for not permitting plaintiff to enter upon land, (held under a demise from defendant, determinable at the end of every year,) to carry off wheat by him sown during his term, according to the agreement.

worked

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worked wheat, and one half of all such white land wheat as at the determination of the said agreement should be sown or growing on the said farm; and the said agreement being so made, afterwards, to wit, on the said tenth day of December, &c. (Mutual promises). And the said Thomas further says, that he the said Thomas, after the making of the said agreement and promises, to wit, on the third day of February A. D. 1735 aforesaid, entered into and upon the said farm with the appurtenances, by virtue of the said agreement, and by virtue of the said agreement held and occupied and enjoyed the same, from thence and until and upon the feast of the Purification of the blessed Virgin Mary A. D. 1742; and that he the said Thomas, by virtue of the liberty given him by the said agreement, at Preston aforesaid, determined the said agreement, and the time of his holding the farm, at and upon the feast of the Purification of the blessed Virgin Mary A. D. 1742 aforesaid, and on the feast last aforesaid delivered up the possession of the said farm with the appurtenances unto the said Richard, to wit, at Preston aforesaid; and that at the said time of so determining of the said agreement, there were sown and growing on the said farm a large quantity, to wit, ten acres of summer-worked wheat at the time of harvest then next following; of all which premises the said Richard there had notice; and that the said Thomas, at the said time of harvest then next following, to wit, on the first day of August A. D. 1743, at Preston aforesaid, was to reap and take away two-third parts of the said summer-worked wheat, according to the said agreement, and then and there required the said Richard to let him so to do accordingly: Yet the said Richard, not regarding, &c. he the said Richard, at the said time of harvest, would not permit or suffer the said Thomas to enter upon the said land where the said summer-worked wheat was so growing, or any part thereof; but on the contrary thereof, he the said Richard, at the said time of harvest, reaped and carried away all the said summer-worked wheat, and converted the same to his own use, although to perform the said agreement, &c.

Declaration in the county court in special assumpsit, for not paying rent accrued by reason of placing a pipe for the use of defendant and servant in a well belonging to plaintiff.

DAVID THOMAS, by John Forbes his attorney, complains against William Robey in a plea of trespass on the case; for that whereas, on the sixteenth day of July in the year of Our Lord 1740, at the parish of St. John, Wapping, in the county of Middlesex, and within the jurisdiction of this court, it was agreed by and between the said David and the said William, that the said David gave free leave unto the said William to put down and enter into the well which then supplied the water-works of the said David with a water-pipe not exceeding two inches in clear bore, in such part of the said well and in such manner as should be most convenient to fix a pump, in order to supply himself and tenants with water at all times when they should want it; and in case the said pump or pipe should at any time want repair, the said William should at such time have free leave (on giving six days notice) to repair

repair and amend the same at his own proper costs and charges, for the term of eighteen years from Christmas then next ensuing; and the said William Robey should therefore pay to the said David during that time, the yearly sum of seven shillings and sixpence, and the said David was not to be at any costs or charge in putting down the said pipe, or in repairing thereof: and the said agreement being so made, he the said David afterwards, to wit, on the same day and year aforesaid, at the parish aforesaid, in the county and jurisdiction aforesaid, at the special instance and request of the said William, undertook, and then and there faithfully promised the said William to perform and fulfil the said agreement, in all things therein contained on his part and behalf to be performed and fulfilled; and in consideration thereof, the said William undertook, and then and there faithfully promised the said David to perform and fulfil the said agreement, in all things therein contained on his part and behalf to be performed and fulfilled. And the said David in fact further saith, that in pursuance of the said agreement the said David afterwards, to wit, on the twenty-fifth day of December A. D. 1740 aforesaid, at the parish aforesaid, in the county and jurisdiction aforesaid, gave free leave to the said William; and that by virtue of that leave the said William did then and there put down and enter into the said well, which then did and still doth there supply the water-works of the said David with water, a pipe of two inches clear bore, or thereabouts, in such parts of the said well and in such manner as was most convenient for the said William to fix a pump, in order to supply himself and tenants with water at all times when they wanted it; and thereby the sum of thirty-seven shillings and sixpence, for five years of the said time, according to the said agreement, at the feast of the birth of Our Lord God A. D. 1745, at that feast became due and payable from the said William to the said David, to wit, at the parish aforesaid, in the county and jurisdiction aforesaid; whereof the said William then and there had notice, and was then and there requested by the said David to pay the same to him accordingly: Yet the said William, not regarding his aforesaid promise and undertaking, but contriving and fraudulently intending, craftily and subtly to deceive and defraud the said David in this behalf, hath not as yet paid the said David the said thirty-seven shillings and sixpence, or any part thereof (although so to do, &c. requested, &c. to wit, at, &c.); but he so to do this hath hitherto wholly refused, and still refuses. (Damages thirty-nine shillings; suit, &c.; pledges, &c.)

Mutual promises.

MIDDLESEX, *ff* James Wright, late of, &c. yeoman, Declaration in was attached by his majesty's writ of privilege issuing out of his C. B. at the suit of an attorney in that court, by attachment of privilege, on a special assumpsit to take a lease of plaintiff, under a lease containing certain covenants to commence at a future day; that plaintiff, confiding in a performance of the agreement on the part of the defendant, suffered him to enter into the house, which he greatly damaged, and pulled down a shed, &c. and on the lease being tendered to him by the plaintiff, refused to accept the same, and discharged the plaintiff from a further performance of the said agreement, and afterwards quitted possession without repairing damages so done to the said house (a).

(a) See *Luxton v. Robinson*, Dougl. 593.

his majesty's

majesty's court here to answer Joseph Kaye, gentleman, one of the attornies of the said court here, according to the liberties and privileges of the said court for such attornies and other ministers of the said court from time immemorial used and approved of, in a plea of trespass on the case; and thereupon the said Joseph in his own proper person complains, for that whereas he the said Joseph before and at the time of the entering into the agreement hereafter mentioned, was seised in his demesne as of fee of and in the messuage and premises with the appurtenances hereinafter mentioned and described; and being so seised, it was heretofore, to wit, on the twenty-third day of August A. D. 1783, at Westminster aforesaid, in the county aforesaid, agreed by and between them the said James and the said Joseph in manner following, that is to say, the said Joseph did agree to let unto the said James, the house known by the sign of the Red Lion in Portland-street, (that is to say, Portland-street in the parish of St. Mary le Bone, otherwise Marybone, in the county of Middlesex, from Michaelmas Term then next, for the term of twenty-one years, at and under the net yearly rent or sum of sixty-three pounds, payable quarterly, and free from all manner of taxes whatsoever; and that he the said Joseph should and would, at the joint costs and charges of him the said Joseph and the said James, execute to the said James a lease of the said premises for the term aforesaid; in which said lease should be contained the common and usual covenants in leases on that estate, and a covenant that the said premises should not be shut up but the licence kept good, and to paint the outside of the wood and iron works upon the said premises once in every three years, three times in oil; and that no auction should be made in or upon the said premises without the consent in writing of the said Joseph, his executors, administrators, or assigns; and that the said Joseph should and would at his own expence empty the necessary-house in and upon the said premises; and the said James did then and there agree to take the said house and premises of the said Joseph for the term aforesaid, at and under the yearly rent above mentioned; and that he the said James should and would at his own expence immediately put the said house and premises into good and tenantable repair, and should leave the same so at the end of the said term; and that he the said James should and would accept a lease of the said premises for the term aforesaid, and execute to the said Joseph a counterpart thereof: and the said agreement being so made. (&c. Mutual promises). And the said Joseph avers, that the said agreement being so made as aforesaid, he the said Joseph, in confidence of a performance of the same on the part of the said James, after the making thereof, to wit, on the said twenty-third of August 1783 aforesaid, suffered and permitted the said James to enter into the said messuage and premises in the said agreement mentioned, for the purpose of repairing the same, according to the tenor of the said agreement; and that during that possession the said James pulled down, destroyed, and removed a certain erection or building there then erected, standing, and being in the yard of and belonging to the

the said messuage in the said agreement mentioned, and part and parcel of the premises so agreed to be leased to the said James as aforesaid, and made divers and very many alterations in the said messuage and other parts of the premises in the said agreement mentioned. And the said Joseph in fact further saith, that although the said James, on and at Michaelmas next after the making of the said agreement, was in possession of the aforesaid messuage and premises in the said agreement mentioned, under and by virtue of the said agreement, and could and might have remained and continued in such possession; and although he the said Joseph, in pursuance of the said agreement, did at his own expence cause the necessary-house, in and upon the said premises in the said agreement mentioned, to be emptied, and, in confidence of a performance of the said agreement on the part of the said James, did prepare and cause to be prepared a valid and effectual lease in the law from him the said Joseph to him the said James of the said premises in the said agreement mentioned, for the said term of twenty-one years in the said agreement also mentioned, containing the common and usual covenants in leases on that estate, and such other covenants as are in the said agreement mentioned and agreed upon, according to the tenor and effect, true intent and meaning, of the said agreement; and although he the said Joseph, as well before as at and after Michaelmas next after entering into the aforesaid agreement, to wit, at Westminster aforesaid, in the said county of Middlesex, was ready and willing, and then and there offered to execute and grant such lease to the said James, if he would accept the same, and execute and grant such lease to the said James, if he would accept the same and execute a counterpart thereof, according to the tenor of the aforesaid agreement; and although he the said Joseph hath done and performed all and every other matter and thing in the said agreement mentioned on his part and behalf to be performed and fulfilled, according to the tenor and effect of the said agreement: Yet the said James, not regarding the said agreement, nor his promise and undertaking in that respect made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Joseph in this behalf, when the said Joseph so offered to execute such lease to the said James as aforesaid, and always from thence hitherto hath always been ready, &c. to pay the rent and taxes to the day of coming in, (that is to say, the day that the said James should come into the possession of the said house,) mend the windows, and give up the possession of the said house (that is to say, to the said James): And it was also further agreed by and between the said Joseph and the said James, that the said James should purchase the said goods and fixtures as above, and likewise the stock of liquors, and that the time of entering and taking possession of the said house, (that is to say, by the said James,) should be on or before Monday the seventh day of July then next; [and that either party to the said agreement, not fulfilling the condition thereof, should (and they did then and there agree to) forfeit twenty pounds to the other party]: And the said agree-

agreement being so made as aforesaid, after the making thereof; to wit, on the said twenty-fifth day of June in the year 1783 aforesaid, at Westminster aforesaid, in the said county of Middlesex, in consideration that the said Joseph, at the special instance and request of the said James, had then and there undertaken and faithfully promised the said James to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled, he the said James undertook, and then and there faithfully promised the said Joseph to perform and fulfil all things in the said agreement contained on his part and behalf to be performed and fulfilled. And the said Joseph in fact saith, that although he the said Joseph hath always, from the time of the making of the said agreement, done and performed, and been ready and willing to do and perform, all things in the said agreement contained on his part and behalf to be performed and fulfilled, according to the tenor and effect, true intent and meaning, of the said agreement [and did accordingly clear up the rent and taxes, and mend the windows of the said house]; and on the seventh day of July next after the making of the said agreement, that is to say, on the seventh day of July A. D. 1783, at Westminster aforesaid, was ready and willing, and then and there offered to give up to, and to permit and suffer the said James, and then and there requested him to enter into and to take possession of the said house in the said agreement specified; and although the said James could and might have then and there entered into and taken possession of the said house [and would then and there have had possession (b) of the same; and although the landlord or person under whom the said Joseph held the same as aforesaid, was then and there ready and willing to have suffered and permitted the said James to have entered into and to have taken possession of the said house, and would have accepted and taken the said James as his tenant thereof]; and although he the said Joseph was then and there ready and willing, and offered to dispose of [and deliver up] the said goods, fixtures, beer, and spirituous liquors in the said agreement specified, and so by the said James agreed to be purchased as aforesaid, [and the possession thereof,] to him the said James, at the rate, upon the terms, and according to the tenor and effect, true intent and meaning, of the said agreement and did then and there, that is to say, on the seventh day of July A. D. 1783 aforesaid, at Westminster aforesaid, appoint, provide, and procure a broker to appraise the same goods and fixtures on the part and behalf of him the said Joseph; and although the said broker was then and there ready and willing to appraise the same accordingly, whereof the said James then and there had notice; and although the said James was then and there requested to appoint, provide, and procure a broker on his part and behalf to appraise the same goods and fixtures on the part and behalf of him the said James; but he so to

(b) Jones v. Barclay, Dougl. 659.

do hath hitherto wholly refused and still doth refuse to accept or take such lease, or to execute a counterpart of the same, or in any manner whatsoever to abide by or to perform the aforesaid agreement on his part and behalf; and, instead of accepting such lease, or abiding by the said agreement, did, upon the said lease being offered to him as aforesaid, entirely abandon the said agreement, and absolutely discharge and exonerate the said Joseph from the same, and the performance thereof on his part, and left and quit the possession of the said premises, without restoring them to their original and former state and condition, and without rebuilding said erection or building so by him pulled down as aforesaid; whereby, and by reason of which said several premises, the said Joseph hath not only lost and been deprived of all benefit and advantage that would have arisen and accrued to him from the said agreement with the said James being carried into execution, but the said messuage and premises, in the said agreement mentioned, were and are considerably injured and damaged, and always, from the time of the said James quitting and abandoning the possession thereof as aforesaid, hitherto have remained and continued, and still are, untenanted and unoccupied: and he the said Joseph hath already been, and must necessarily continue to be, at a great expence in restoring them to their original state, and in procuring a tenant for the same, to wit, at Westminster aforesaid, in the said county of Middlesex. (Second Count, omitting what is contained within brackets; two Counts for use and occupation, &c. one for money had and received; one on account stated; and common conclusion to the four last Counts.)

V. LAWES.

WARWICKSHIRE, ff. William Brice, late of, &c. was attached to answer unto Richard Hobbs of a plea of trespass on the case; and thereupon the said Richard, by A. B. his attorney, complains, that whereas at the time of the making of the promise and undertaking hereafter next mentioned, he the said Richard was, and for a long time then last past, had been possessed of and in a certain messuage or tenement with the appurtenances, situate and being at Birmingham, in the county aforesaid, and during all that time held the same as tenant thereof to him the said William, at and under a certain yearly rent therefore payable by the said Richard to the said William for the same, and at the time of the making of the promise and undertaking, there was due and owing from the said Richard to the said William certain arrears of rent for the said premises; and the said Richard being so possessed of and in the said messuage and tenement with the appurtenances as aforesaid, as tenant thereof to the said William in manner aforesaid, and whilst he the said William was in possession of the said messuage or tenement with the appurtenances as aforesaid, as tenant thereof to the said William as aforesaid, to wit, on the first day of March A. D. 1756, at, &c. aforesaid, in consideration that the said Richard, at the special instance and request

Declaration in C. B. on special assumpsit, in consideration that plaintiff, who was tenant to defendant, would quit and deliver up possession of the premises a fortnight before quarter-day, he promised to give him two guineas and a discharge for rent up to quarter-day.

quest of the said William, would leave and yield up the possession of the said messuage or tenement with the appurtenances to the said William a fortnight before the twenty-fourth day of June, commonly called Midsummer-day, then next following, he the said William undertook, and then and there faithfully promised the said Richard, to pay to him the said Richard the sum of two guineas of lawful, &c. and also to give to the said Richard a discharge for all rent that then was or should accrue and grow due from the said Richard to the said William for the rent of the said messuage or tenement until and on the said twenty-fourth day of June then next ensuing: and the said Richard avers, that he, confiding in the aforesaid promise and undertaking of the said William, he the said Richard, at the instance and request of the said William, did leave and yield up the possession of the said messuage or tenement with the appurtenances to him the said William a fortnight before the said twenty-fourth day of June A. D. 1756 aforesaid, to wit, on the ninth day of June A. D. 1756 aforesaid; and the said William then and there took and received the possession thereof of and from the said Richard; whereof the said William afterwards, to wit, on the ninth day of June A. D. 1756, at, &c. aforesaid, had notice: by reason whereof the said William, according to his promise and undertaking so by him made in this behalf as aforesaid, became liable to pay, and ought to have paid to the said Richard the said sum of two guineas above mentioned; and also to give to him the said Richard a discharge from all rent accruing and growing due and owing from the said Richard until and on the twenty-fourth day of June 1756 to the said William for the aforesaid premises; of all which last mentioned premises he the said Richard afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, had notice: Yet the said William, not regarding, &c. hath not yet paid the aforesaid sum of two guineas, or any part thereof, to the said Richard, nor hath he at any time hitherto given to the said Richard any discharge whatsoever for the rent accruing and growing due until and on the said twenty-fourth day of June 1756 aforesaid from the said Richard to the said William, or of any part or parcel thereof (although to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid, he the said William was requested by the said Richard afterwards, to wit, on the same day and year last aforesaid, and often afterwards, to wit, at, &c. aforesaid); but he to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid, hath hitherto wholly refused, and still refuses. Damages twenty pounds.

GLAMORGANSHIRE, *ff.* The right honourable lord
 Declaration in viscount Windsor complains of George Williams, being in the
 B. R. at the suit against his Tenant, who had dug iron-ore out of the lands without plaintiff's leave,
 of the Lord In consideration plaintiff would not sue defendant for same, he promised to pay him the value of all the
 ore he dug (a).

(a) See Assumpsit in consideration of forbearance *infra*.

custody,

custody, &c. in a plea of trespass on the case, &c. for that whereas the said George for a long time, to wit, for the space of seven years last past before the making of the promise and undertaking of the said George hereafter next-mentioned, was tenant in possession of certain lands and tenements with the appurtenances, situate, lying, and being in the parish of, &c. in the said county of, &c. of which said lands and tenements with the appurtenances he the said plaintiff during all that time was and yet is seised, to wit, in his demesne as of fee; and the said George during all that time held the same of the said plaintiff, and as tenant thereof to the said plaintiff, by virtue of and under a certain demise thereof thencefore made by Sir Jeffery Jefferies knight, and John Jefferies esquire, then landlords thereof, and who at the time of the making of that demise were landlords thereof, and had then a power of making of the same, and whose estate therein is since determined, and out of which said demise all mines, minerals, and quarries of stone and slate, and all other mines, except mines of coals, being or to be found in or upon the premises aforesaid, or any part thereof, were excepted, to wit, at the parish aforesaid; and the said George so being tenant in possession of the said lands and tenements with the appurtenances, and so holding the same under and of the said plaintiff his tenant thereof, he the said George, notwithstanding the said exception, divers and very many days and times within the said space of seven years, had wrongfully and unjustly got, raised, and dug divers great quantities of iron ore out of the said lands and tenements, and had carried away the same, and had sold the same, or converted and disposed of the same to his own use, to the great damage of the said plaintiff; for which said trespass or offence he the said plaintiff, before and at the time of the making of the promise and undertaking of the said George hereafter next mentioned, intended to sue, and was about to sue the said George at law, [or in some court of equity, in order to find out the quantities and values of the said iron ore so dug, raised, and got, and to recover an adequate satisfaction for the damages,] “in order to recover his damages” by him sustained on occasion of the premises against the said George; of all which said premises the said George, on the twentieth day of August A. D. 1752, at, &c. aforesaid, had notice; and thereupon afterwards, to wit, on the said 28th day of August 1752, at, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said George, would not commence any suit at law [or in equity] against the said George of or concerning the said trespass, [and premises as last aforesaid,] but would from thenceforth wholly cease and abstain therefrom, he the said George undertook, and then and there faithfully promised the said plaintiff to render a true and just account of all iron ore disposed of by the said George, and of the money received for the same, and the said money to pay to the said plaintiff, or his agent appointed to receive the same, on or before the sixth day of November then next, together with all charges that had been expended upon ac-

count of any suit in law or equity that was to have been commenced against him the said George by the said plaintiff for the said trespass; and in default of the said George's performing that part of the said promise, to pay unto the said plaintiff, or his order, the sum of forty pounds. And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said George so by him made as aforesaid, he the said plaintiff hath not at any time hitherto commenced any suit at law [or in equity] against the said George of or concerning the said trespass, but hath always from thenceforth wholly ceased and abstained, and still doth cease and abstain therefrom; and that the said George did not, on or before the said sixth day of November, after the making of the said promise and undertaking, or at any other time hitherto, render a true and just account of all the iron ore disposed of by him the said George, or of any part thereof, nor of the money received for the same, nor has he paid the said money, or any part thereof, to the said plaintiff, or to his agent appointed to receive the same, but hath therein wholly failed and made default; whereby the said George became liable and ought to pay, according to his promise and undertaking aforesaid to the said plaintiff, the said sum of forty pounds, to wit, at, &c. aforesaid; whereof the said George then and there had notice. (Add another Count, omitting what is contained within *inverted commas*, and inserting what is contained within *brackets*. Money had and received.)

In the Great Session for }
Montgomeryshire, } Between { Lewis Jones plaintiff,
AND
William Davis defendant.

In a Plea of Trespass on the Case to the Plaintiff's Damage of one hundred pounds.

MONTGOMERYSHIRE, to wit. And the said Lewis Jones, by A. B. his attorney, complains of the said William Davis, for that whereas, before and at the time of making the agreement hereinafter next mentioned, the said Lewis held and occupied as tenant thereof to one David Salter, a certain farm and lands, called Aberkenfelin, situate, lying, and being in the parish of Mackyruith in the county of M. for a certain term which was nearly expired, and at the expiration of which said term the said Lewis was then about to quit and yield up the said premises to and in favour of the said William as succeeding tenant thereof; and the said Lewis being so possessed thereof, and about to quit and yield up the said farm and lands, and the said William being so about to enter into and upon the same as succeeding tenant as aforesaid, heretofore, to wit, on the thirtieth day of January, the said defendant to take sheep at 10s. per head, and defendant and servants to fire to dress meat, &c. till Old Lady day should arrive; defendant refused to accept the sheep, or pay the 10s.

nuary

nuary A. D. 1703, at the parish aforesaid, in the county aforesaid, it was agreed by and between the said Lewis and the said William to the effect following, that is to say, that the said William should pay to the said Lewis the sum of twenty-five pounds, deducting ten shillings for the privilege of ploughing the lands of the said farm, and of doing all other acts of husbandry in and upon the said farm and lands, from the time of making the said agreement, until Lady-day then next following, when the holding of the said William was to commence; and that the said Lewis was to use and consume all the hay, straw, and fodder which then was on the said farm and lands, and should and would have all the muck, dung, and compost arising therefrom on the said farm, lands, and premises, when he the said Lewis should quit and deliver up the same farm, lands, and premises to and for the use of the said William; and also the said William was to have and take all the sheep which should belong to the said Lewis, to be delivered at the said Lady-day following at ten shillings per head; and also that said William and his servants should have a bed to lie in and a fire to dress their meat and victuals at, until Old May-day, the time at which the said Lewis was to leave and deliver up the said farm and lands: and the said agreement being so made as aforesaid, in consideration that the said Lewis, at the special instance and request of the said William, had then and there, to wit, on the day and year aforesaid, at the parish aforesaid, in the county aforesaid, undertaken and faithfully promised the said William to perform every thing in the said agreement contained on the part and behalf of the said Lewis to be done, performed, and fulfilled, he the said William undertook, and to the said Lewis then and there faithfully promised to perform and fulfil every thing in the said agreement contained on the part and behalf of the said William to be performed and fulfilled. And the said Lewis in fact further says, that he, confiding in the said promise and undertaking of the said William, after the making of the said agreement, to wit, on the same day and year in that behalf above mentioned, at the parish aforesaid, in the county aforesaid, in pursuance of the said agreement, did from that time permit and suffer the said William to plough the said lands of the said farm, and to do all acts of husbandry thereon until Lady-day then next, and now last past, and did use and consume all the hay, straw, and fodder, which at the time of making the said agreement was upon the said premises, and did leave all the muck there at Old May-day, in the said agreement mentioned, to and for the use of the said William, when he the said Lewis also quitted the said premises in favour of the said William: and although he the said Lewis, at the said Lady-day next after the making the said agreement, and now last past, had and was possessed of divers, to wit, twenty-three sheep, which at the time of making the said agreement were the sheep of the said Lewis, upon the said farm, and at the said Lady-day was ready and willing, and offered to sell and deliver up all and singular the said sheep to the said William,

at and for the price or sum of ten shillings a head for each and every of the said sheep, according to the said agreement; and also was ready and willing to find and provide for the said William and his servants a bed to lie in, and a fire to dress their meat and victuals at, for and during all the time from the day of making the said agreement until Old May-day aforesaid, being the time when the said Lewis was to quit the said premises, according to the said agreement; and although the said Lewis in all other respects performed, fulfilled, observed, and kept the said agreement, on the part and behalf of the said Lewis in the said agreement mentioned to be performed, fulfilled, observed, and kept; and although the said William, after making the said agreement, and before the said Lady-day following, to wit, on the first day of February in the said year 1793, did enter and come into and upon the said lands and premises in the said agreement mentioned, by the permission of the said Lewis, and by virtue of the said agreement; and although the said William hath been repeatedly requested and required to perform his said agreement with the said Lewis: Yet the said Lewis in fact says, that the said William, not regarding the said agreement, nor his said promise and undertaking so as aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Lewis in this behalf, did not nor would pay, nor has he the said William as yet paid the said sum of twenty-five pounds (abating ten shillings, to be thrown back by the said Lewis, and which he has always been, and is now willing to allow and remit) to wit, at the parish aforesaid, in the county aforesaid, or any part thereof; nor hath the said William accepted of the said Lewis the said sheep, or any of them, at the price aforesaid, nor paid to the said Lewis ten shillings a-head for the same, or any other sum of money whatsoever, according to the said agreement, but so to do wholly refused and neglected, and still doth refuse to perform his said agreement in all or any of the particulars aforesaid, to wit, at the parish aforesaid, in the county aforesaid. (Counts for sheep and other cattle bargained and sold; money laid out; money lent; money had and received; and account stated.)

Declaration against Defendant upon an implied assumpsit to spend the produce of the land upon the premises, according to the terms of a lease for which an agreement had been signed by the parties, but the lease itself never executed.

FOR that whereas on the twenty-fifth day of March 1785, at M. in the said county of M. in consideration that the said plaintiff, at the special instance and request of the said defendant, had demised and to farm let to the said defendant certain lands and premises with the appurtenances, to wit, five hundred acres of land with the appurtenances of the plaintiff, situate and being in the said parish of , in the said county, for and during the term of one whole year from thence next ensuing, and fully to be complete and ended, and so from year to year, for so long a time as the said plaintiff and defendant should please, at and under a certain yearly rent to be therefore paid by the said defendant to the said plaintiff, he the said defendant *assumpsit* that he the said defendant would not carry, or permit or suffer any person or persons

sons to take or carry away any hay or straw off any part of the said premises, but that he would store the same there, and would spend all the hay, straw, compost, and manure on the aforesaid premises: And the said plaintiff in fact says, that by virtue of the said demise the said defendant afterwards, to wit, on the same day and year aforesaid, entered into and upon the said demised premises with the appurtenances, and became and was possessed thereof, and continued so possessed thereof until and upon the twenty-fifth day of March 1788, when he the said defendant quit-
 ted and yielded up the same to the said plaintiff, to wit, at the parish, &c. aforesaid: Yet the said defendant not regarding, &c. but contriving, &c. did, during the time he the said defendant was so possessed of the said demised premises with the appurtenances as aforesaid, to wit, on the twenty-fifth day of March 1785, and on divers other days and times between that day and the said twenty-fifth day of March now last past, carry away, and permit and suffer divers persons to carry away and take from off the said demised premises divers large quantities of hay and straw arising from the aforesaid premises during the time aforesaid, to wit, five hundred cart-loads of hay and five hundred cart-loads of straw, and did not store the same or any part thereof upon the said premises, or upon any part thereof, and did spend all the hay, straw, compost, and manure arising upon and from the said demised premises with the appurtenances, in and upon any part of the said demised premises with the appurtenances; but on the contrary thereof, did during all the time aforesaid take and carry away the said hay and straw, and divers large quantities of compost and manure, to wit, five hundred cart-loads of compost and five hundred cart-loads of manure, arising and coming upon and from the aforesaid premises, from off the said premises, and converted and disposed thereof to his own use, contrary to the form and effect of his said promise and undertaking so by him made as aforesaid, to wit, at, &c. (2d Count same as first, only stating, that in consideration plaintiff would permit and suffer defendant to occupy and enjoy certain other lands, &c. and an averment that he did permit.)

And whereas also afterwards, to wit, on the said twenty-fifth day of March 1785, at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, would permit and suffer the said defendant to hold, use, and occupy certain other lands and premises with the appurtenances of the said plaintiff, to wit, five hundred acres of other land of the said plaintiff with the appurtenances, situate, lying, and being at the parish aforesaid, in the said county, as tenant thereof to the said Edward, at and under a certain yearly rent to be therefore paid by the said defendant to the said plaintiff, he the said defendant undertook, &c. that he the said defendant would manage, order, and husband the said lands according to the due course of husbandry, and in a proper and husbandlike manner: And he the said plaintiff says, that he, relying on the promises and undertakings of the said defendant so by him made as aforesaid, did permit and

Third Count generally for not using the premises in an husbandlike manner.

suffer the said defendant to hold and occupy the said last mentioned lands with the appurtenances as tenant thereof as last aforesaid; and thereupon the said defendant, by such permission and sufferance as last aforesaid, afterwards, to wit, on the same day and year last aforesaid, entered into and upon the said last demised premises with the appurtenances, and became and was, and continued so possessed thereof continually from thence until and upon the day of March, to wit, at the parish aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. did not, during the time he the said defendant was so possessed of the said last mentioned premises with the appurtenances as last aforesaid, manage, order, or husband the said lands in a husbandlike manner; but on the contrary thereof, afterwards, to wit, on the said day of 1785, and on divers other days and times between that day and the said twenty-fifth day of March now last past, carry and permit, and suffer divers persons to take and carry from off the said last mentioned premises with the appurtenances divers large quantities of hay and straw arising upon the said last mentioned premises during the time last aforesaid, to wit, five hundred cart-loads of hay and five hundred cart-loads of straw, and did not spend all or any part of the hay, straw, compost, and manure arising upon and from the said last mentioned premises with the appurtenances, in and upon any part of the said last mentioned premises with the appurtenances; but on the contrary thereof did, during the time last aforesaid, take and carry away the said last mentioned hay, and divers large quantities of compost and manure, to wit, five hundred cart-loads of compost and five hundred cart-loads of manure, arising and growing upon and from the said last mentioned premises, from off the said last mentioned premises, and converted and disposed thereof to his own use, contrary to the form and effect of the said last mentioned promise and undertaking so by him made as last aforesaid, whereby the said last mentioned premises became and were much injured, impoverished, diminished, and lessened in value, to wit, at M. aforesaid, in the said county. *Drawn by MR. GRAHAM.*

Declaration for not paying for some trees which plaintiff had agreed to leave in defendant's garden at the end of plaintiff's lease of the same, for defendant's use.

MIDDLESEX, to wit. J. T. complains of J. S. being, &c. for that whereas before and at the time of the making the promise and undertaking hereinafter next mentioned, the said J. T. was possessed of and held and occupied a certain garden with the appurtenances, situate and being in the parish of in the said county of M. under and by virtue of a certain demise to him thereof by the said J. C. which was to end and expire, and did end and expire on the, &c. the reversion of which said garden with the appurtenances belonged to the said J. S. after the end and expiration of the said demise; and the said J. T. as such occupier and possessor as aforesaid, was during the time aforesaid possessed of and entitled to certain trees and plants growing in and upon the said garden with the appurtenances, to wit, at Westminster

Westminster in the said county of M.; and the said J. T. being so possessed of the said garden with the appurtenances as aforesaid, and the reversion thereof belonging to the said J. S. and the said J. T. being so possessed of and entitled to the trees and plants as aforesaid, afterwards and before the feast-day of St. Michael the Archangel as aforesaid, to wit, on the day of 1787, at W. aforesaid, in the said county, in consideration that the said J. T. at the special instance and request of the said J. S. would leave the said trees and plants so growing and being in the said garden with the appurtenances as aforesaid, at the end and expiration of the said demise, to and for the use of the said J. S. he the said J. S. undertook, and to the said J. T. then and there faithfully promised, to pay to him the said J. T. so much money as the said trees and plants, at the time of leaving them in and upon the said garden with the appurtenances as aforesaid, should be reasonably worth; and the said J. T. confiding in the said promise and undertaking of the said Joseph, afterwards, and at the end and expiration of the said demise, and when he gave up the possession of the said premises with the appurtenances to the said J. S. to wit, on the twenty-ninth day of September in the year last aforesaid, the same being the feast of St. Michael the Archangel aforesaid, did leave the said trees and plants in the said garden with the appurtenances, to and for the use and benefit of the said J. S. whereby the said J. S. became liable to pay to the said J. T. so much money as the trees and plants were respectively worth at the time of the leaving them as aforesaid, to wit, at, &c. And the said J. T. in fact further saith, that the trees and plants so left in and upon the said garden with the appurtenances as aforesaid were reasonably worth, at the time of leaving them as aforesaid, a large sum of money, to wit, the sum of thirty pounds of, &c. to wit, at W. aforesaid, in the said county; whereof the said J. S. afterwards, to wit, on the same day and year aforesaid, there had notice.

Drawn by MR. GRAHAM.

YORKSHIRE, to wit. F. D. the elder and W. J. complain against J. R. being, &c. for that whereas the said E. D. before and at the time of the agreement hereinafter next mentioned, was, and continually from thenceforth hitherto hath been and still is seised, as well of and in a certain messuage or dwelling-house, barn and other outhouses, and divers closes of land with the appurtenances, as also of and in a certain allotment, or piece or parcel of land, situate, lying, and being in the parish of, &c. in the said county of Y. called G. which said allotment, or piece or parcel of land, before the making of the agreement hereinafter mentioned, had been divided, enclosed, assigned, and allotted to the said F. D. under and by virtue of a certain act of parliament made and passed by the parliament of Great Britain for the allotting of certain common fields in the parish of, &c. in the county of Y. aforesaid, at, &c. in; &c. And whereas the said W. J. during

Declaration in assumpsit on an agreement to pay 1s. 3d. in the pound for every pound that plaintiff should lay out in the expences of an act of parliament for inclosing and allotting of lands and for walling premises, and for draining two allotments of land.

Mutual promises.

during the time aforesaid, hath been and still is seised of and in a certain other allotment, piece or parcel of land, situate, lying, and being at, &c. which said last mentioned allotment, piece or parcel of land, before the making of the agreement hereinafter next mentioned, had likewise been divided, enclosed, assigned, and allotted to the said W. J. under and by virtue of the said act of parliament, to wit, at, &c. in, &c. and the said E. D. being so seised as well of and in the said messuage or dwelling-house, barns, and other outhouses, and the said closes of land with the appurtenances, and also of and in the said E. D.'s allotment, or piece or parcel of land, so divided, enclosed, allotted, and assigned as aforesaid; and the said W. J. being so seised of his the said W. J.'s allotment, or piece or parcel of land, so divided, enclosed, allotted, and assigned as aforesaid, afterwards, to wit, on, &c. at, &c. it was agreed by and between the said E. D. and W. J. and the said J. R. in manner and form following; (here set out the agreement, whereby it was *inter alia* agreed, that the said J. R. should pay unto the said plaintiffs, for two allotments, or pieces or parcels of land, of them the said plaintiffs, the sum of one shilling and three pence for every pound that they the said plaintiffs, their heirs and assigns, should lay out in the expences of the said act, for walling, breaking up, and draining the said two allotments of land of them the said plaintiffs, and other expences attending the same, which said rents were to be half-yearly;) and the said agreement being so made as aforesaid, afterwards, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff had, at the special instance and request of the said defendant, undertaken, and then and there faithfully promised to do, perform, and fulfil every thing in the said agreement contained on their part and behalf to be done, performed and fulfilled, he the said defendant undertook, and then and there faithfully promised the said plaintiffs to do, perform, and fulfil every thing in the said agreement contained on the part and behalf of the said defendant to be done, performed, and fulfilled. And the said E. D. and W. J. in fact further say, that the said defendant, in pursuance of the said agreement, and after Candlemas-day then next, to wit, on, &c. at, &c. entered into and upon the said two allotments, or pieces or parcels of land, with the appurtenances, of them the said plaintiffs, and became and was possessed thereof, and continually from thenceforth hitherto hath been and still is possessed thereof, to wit, at, &c. in, &c. And the said plaintiffs in fact say, that they the said plaintiffs paid, laid out, and expended, in the expences of the said act, and for walling, breaking up, and draining the said two allotments, or pieces or parcels of land, and other expences attending the same, a large sum of money, to wit, the sum of forty-three pounds and upwards of lawful money of Great Britain; whereby and by reason thereof, and according to the form and effect of the said agreement so made as aforesaid, the said defendant became liable to pay to the said plaintiff, yearly and every year during the said space of seven years
above

above mentioned, in manner and form above mentioned, a large sum of money, to wit, the sum of pounds, the same being at and after the rate of one shilling and threepence for every pound so by them the said plaintiffs paid, laid out, and expended as aforesaid, in the expences of the said act, and for walling, breaking up, and draining the said allotments, pieces or parcels of land, and other expences attending the same as aforesaid, to wit, at, &c.; of all which premises the said defendant afterwards, to wit, on, &c. at, &c. had notice. And the said plaintiffs further say, that on, &c. the same being Martinmas in that year, the sum of pounds of the rent aforesaid was due and payable from the said defendant to the said plaintiffs as aforesaid, ending at and upon the day and year last aforesaid, on that day in that year became due in arrear and unpaid, from the said defendant to the said plaintiffs, according to the form and effect of the said agreement, and the said promises and undertakings of the said John so made as last aforesaid, to wit, at, &c. in, &c.: Yet the said defendant, not regarding his said agreement, nor his promise and undertaking so made by him as aforesaid, but contriving, &c. the said plaintiff in this behalf, hath not yet paid the said sum of pounds of the rent aforesaid so due in arrear and unpaid as aforesaid, or any part or parcel thereof, to the said plaintiffs, or to either of them, although so to do he the said defendant afterwards, to wit, on, &c. at, &c. was requested by the said plaintiffs; but to pay the same, or any part thereof, to the said plaintiffs, hath hitherto wholly refused, and still refuses, contrary to the form and effect of the said agreement, and the said promise and undertaking so by him made as aforesaid. (Damage.)

Drawn by MR. CROMPTON.

THAT on the first of January A. D. 1757, and from thence until and at the time of the making of the agreement hereafter mentioned. he the said John Redding was possessed of and in a certain messuage with the appurtenances, called and known by the name or sign of the Shoulder of Mutton and Cat, situate in the parish of St. John, Hackney, in the county of Middlesex, and in the said messuage with the appurtenances, during all that time used, followed, and exercised the trade and business of a victualler; and the said plaintiffs having good right and title to recover of, from, and against the said defendant the possession of the said messuage with the appurtenances, they the said plaintiffs, in Hilary Term in the thirtieth year of the reign of our lord the now king, in the court of our said lord the king of the Bench, at Westminster, caused a certain suit in a plea of trespass and ejectment of the same to be brought at the suit of Richard Goodtitle plaintiff, on the demise of the said now plaintiff, against Robert Thrustout, as a casual ejector, for the recovery of the possession of the said messuage with the appurtenances of, from, and against the now defendant, who then was tenant in possession of the said premises; and by the declaration in that suit the said now plaintiff caused the said

Declaration on special agreement: plaintiff having recovered possession of a messuage in which defendant lived, by ejectment, in consideration that plaintiff would permit defendant to continue in it for a certain time, he promised to keep the same open as a victualling-house, and to deliver possession at a certain time, of forfeit sol.

Richard

Richard Goodtitle, the nominal plaintiff in that suit, in the same Hilary Term, in the thirtieth year aforesaid, by John Higgs his and their attorney, to declare, and the said Richard Goodtitle did then by his attorney declare in that plea or suit, for that whereas the said George Hodgson and Edward Gordon, on the first day of June (&c. to the end of the Declaration); of all which said premises the said John Redding at the parish aforesaid had due notice: but the said John Redding, not making any defence in the said plea or suit, nor causing himself to be made defendant therein in the place or stead of the said Robert Thurstout, according to the course and practice of the said court, such proceedings were thereupon had in the said court there in the said plea, that afterwards, to wit, in the said Hilary Term in the thirtieth year aforesaid, he the said Richard Goodtitle, by the consideration and judgment of the said Court, recovered in the said plea his said term then to come of and in the said messuage with the appurtenances, as by the record and proceedings thereof, still remaining in the said court here in full force, more fully and at large appears: and thereupon afterwards, to wit, on the day of in the thirtieth year aforesaid, they the said George Hodgson and Edward Gordon, for the obtaining of the possession of the said messuage with the appurtenances, caused to be sued and prosecuted out of the said court here, of and upon the said judgment, a certain writ of our said lord the king of *habere facias possessionem*, directed to the sheriff of the said county of Middlesex, and returnable here in this court in fifteen days from Easter-day then next ensuing, whereby the said sheriff was commanded to cause the said Richard Goodtitle to have possession of his said term then to come of and in the said messuage with the appurtenances; and which said writ was afterwards, and before the return thereof, to wit, on the twentieth of February in the year of Our Lord 1757, at the parish of St. John at Hackney aforesaid, duly executed by A. B. and C. D. esquires, then and still being sheriff of Middlesex; and thereupon afterwards, to wit, on the first of March 1757, at the parish aforesaid in the county aforesaid, it was agreed by and between the said G. H. and E. G. and the said John Redding, that the said G. H. and E. G. notwithstanding the said recovery in ejectment and the execution of the said writ, should suffer the said J. R. to hold the premises from thence until the twenty-fourth of June then next following, and that said J. R. should, during all that time, keep open the said house or messuage for the sale of beer, ale, wines, &c. and that he should take all such ale and beer of the said G. H. and E. G. they the said G. H. and E. G. then being, and during all that time using and exercising jointly together the art, trade, or business of brewers; and that the said J. R. should, at the expiration of that time, or sooner, deliver and quit possession of the said house and premises to the said G. H. and E. G.; and that the said J. R. should pay to the said G. H. and E. G. by way of forfeiture, the sum of fifty pounds, in case he should make any default of the performance of the said agreement.

on his part: and the said agreement being so made, &c. &c. &c.
(*Indebitatus assumpsit* and *quantum meruit* for use and occupation.)

FOR DOUBLE RENT*.

WILTS. For that whereas the said plaintiff on the ninth of June A. D. 1787, was, and for a long space of time, to wit, the space of two years and upwards, then last past, had been possessed of, and held and enjoyed divers, to wit, two messuages, and a certain farm consisting of divers buildings, lands, and grounds of him the said plaintiff, situate and being at Easterton in the parish of Market Lavington, in the county of Wilts, as tenant thereof to said plaintiff, under and by virtue of a certain demise thereof to him the said defendant thereof before that time made from year to year, during so long a time as the said plaintiff and said defendant should please, under the yearly rent of ninety pounds, payable by said defendant to said plaintiff half yearly, that is to say, on the tenth of October and fifteenth of April every year, by even and equal portions; and being so possessed thereof, he said defendant, on June ninth of June A. D. 1787, at the parish aforesaid, in the county aforesaid, gave notice to said plaintiff of his intention to surrender and yield up to said plaintiff, on the fifth of April then next, the peaceable and quiet possession of the same premises, farm, and lands so holden by him of said plaintiff, as aforesaid; nevertheless said defendant did not surrender, yield up, and deliver to said plaintiff, on the fifth day of April next ensuing the giving of said notice, being the time in such notice mentioned for that purpose, the peaceable and quiet possession of said premises, or any part thereof, according to such notice; but, on the contrary thereof, notwithstanding said notice, kept and with-held the possession thereof, and of every part thereof, from said plaintiff for a long space of time, to wit, continually from thenceforth until the fifth of June A. D. 1788: by reason whereof, and by force of the statute in such case made and provided, the said defendant became liable to pay to the said plaintiff, from the time he so kept and with-held the possession of the said premises from the said plaintiff as aforesaid, a large sum of money, to wit, the sum of thirty pounds of lawful, &c. being double the rent or sum which said defendant ought otherwise to have paid to the said plaintiff for the same; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at the parish aforesaid, undertook, and then and there faithfully promised said plaintiff to pay him said sum of money when he said defendant should be thereto afterwards requested. And whereas also, before the making of the promise of said defendant next herein after mentioned, to wit, on the first of April A. D. 1783, at the parish of Market Lavington aforesaid, said plaintiff

Declaration in
assumpsit on
stat. 11. Geo. II.
c. 19. s. 18. a-
gainst a tenant
(of houses and
lands, where
different parts
of the premises
were demised to
hold from and
to different pe-
riods, for dou-
ble rent, for
holding over af-
ter notice given
by him to quit,
&c. (See Debt
on Statutes.)

For other pre-
mises, part held
from 5th, and
other parcel
from the 25th.

* See Actions on Statutes.

had

Other premises
from 25th July,
at yearly rent,
payable half
yearly.

Notice to quit ;

and although
defendant quit-
ted part of pre-
mises, yet did
not quit other
part of premises.

Averment of
the respective
proportions of
the yearly rent.

had demised to said defendant divers, to wit, two other messuages and a certain other farm, consisting of divers other buildings, lands, and premises, situate and being at Easterton aforesaid, in the said parish of Market Lavington, to hold same to said defendant as tenant for a year, so forward from year to year during so long time as said defendant and said plaintiff should please, from the respective times following, that is to say, as to a certain close called the Orchard, and divers other closes of land, and divers sheep heights and sheep walks, parcel of the said last-mentioned demised premises, from the fifth day of April A. D. 1783, and as to a certain close called Twenty Lands, parcel of said last-mentioned demised premises, from the twenty-fifth of April in the same year, and as to the said messuages, barns, stables, backfides, and buildings, residue of the said last-mentioned demised premises, from the twenty-fifth day of July A. D. 1784, at and under the yearly rent of ninety pounds payable by said defendant to said plaintiff half yearly, that is to say, on the tenth of October and fifth of April, by even and equal portions ; by virtue of which said last-mentioned demise, said defendant entered into the said several last-mentioned premises so demised to him as last aforesaid, and became, and was, and from thenceforth until and at the time of the notice hereinafter mentioned continued to be, possessed thereof : and being so possessed thereof, he the said defendant afterwards, to wit, on the ninth of June 1787, at the parish aforesaid, gave notice to said plaintiff of his intention to surrender, yield up, and deliver to him said plaintiff, on the fifth of April next ensuing, the peaceable and quiet possession of the said last-mentioned messuages, farm, and lands so holden by said plaintiff as last aforesaid ; by virtue of which said last-mentioned notice, said defendant ought to have quitted and delivered to said plaintiff the possession of such parts of said last mentioned premises as were demised to him, from said fifth of April A. D. 1783, on the fifth day of April next after the giving of such notice, and of the said close called Twenty Lands, on the twenty-fifth day of April next after the giving of same notice : And said plaintiff in fact saith, that although said defendant did, on the fifth of April next after the giving of said last-mentioned notice, quit and deliver up to said plaintiff the peaceable and quiet possession of divers of said closes of land parcel of said last-mentioned demised premises, which were demised to him from said fifth of April A. D. 1783 as aforesaid, yet said defendant did not quit and deliver up to said plaintiff the possession of said close called the Orchard on said fifth day of April, nor of said close called Twenty Lands on said twenty-fifth day of April next after the giving of such last-mentioned notice ; but on the contrary thereof, notwithstanding such notice, kept and withheld the possession of the same closes, and every of them, from said plaintiff, continually from the respective times aforesaid until the fifth of June A. D. 1788. And the said plaintiff avers, that the respective yearly rents of said close called the Orchard, and of said close called Twenty Lands, in proportion to said rent of ninety pounds

on the whole of the said last-mentioned demised premises, amounted to divers large sums of money, that is to say, the yearly rent of said close called the Orchard to the sum of five pounds, and the yearly rent of said close called Twenty Lands to the sum of twenty pounds; of all which said premises said defendant afterwards, to wit, on the same day and year last aforesaid, at the parish, &c. aforesaid, had notice: and by reason of the premises, and by force of the statute in that case made and provided, said defendant became liable to pay to said plaintiff, for the respective times he so kept and withheld the possession of the said several closes respectively as last aforesaid, divers other large sums of money, that is to say, in respect of said close called the Orchard the sum of one pound thirteen shillings and four-pence, and in respect to said close called Twenty Lands the sum of four pounds eleven shillings and eight-pence, being double the rents or sums which said defendant ought otherwise to have paid for the same; and being so liable, he said plaintiff, in consideration thereof, afterwards, to wit, on same day and year last aforesaid, at the parish aforesaid, undertook, and faithfully promised said plaintiff, to pay him the said several sums of money last mentioned, when afterwards he should be thereto requested. (Add two Counts for the use and occupation of divers other messuages, lands, tenements, and hereditaments; and common conclusion.)

Double Rent.

LANCASHIRE, to wit. William Abbat complains against John Riley, being in the custody of the marshal of the Marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c. for that the said John, after the twenty-fourth of June A. D. 1738, mentioned in a certain act of parliament made in the eleventh year of the reign of his late majesty king George the Second, entitled, “(a) An act for the more effectual securing the payment of rents, and preventing frauds by tenants,” to wit, on the twelfth day of February in the year of Our Lord 1790, to wit, at Preston in the county of Lancaster, by force of the statute in such case made and provided, became and was indebted to the said William in a large sum of money, to wit, the sum of (b) eighty pounds of lawful, &c. for the use and occupation of a certain messuage or dwelling-house, stable, and garden,

Declaration in assumpsit for double rent, on the stat. 11. Geo. II. c. 19. s. 13. against a tenant of a dwelling-house, for holding over, after notice given by him to quit.

(a) This must be verbatim the same as in the statute.

(b) I doubt, on a reference to the statute, whether the plaintiff can recover a full year's double rent, the defendant having quitted at Candlemas, but the year not expiring till May-day; so that the double rent should be calculated deducting the fraction, and the sum made the exact amount of the rent due.

T. B.

As there was a doubt whether the claim of double rent on the 12th February 1790 might be deemed premature, (though the original rent was reserved payable on that day,) the year not expiring till 12th May, I advised the Declaration to be entitled of Thursday the 12th May in Term, and to insert a second Count for double rent due 12th May, in the very words of the first Count.

T. BARROW.

with

with the appurtenances, situate in a certain street called Fryergate, in P. aforesaid, in the county aforesaid, before that time had, held, used, occupied, possessed, and enjoyed by the said John, at his special instance and request, as tenant thereof to the said William, at and under the yearly rent of forty pounds per annum, *payable at Lady-day in each year*, for a long space of time then elapsed, to wit, from the *twelfth of February A. D. 1789, as to the said garden, and from the twelfth of May then next following as to the said dwelling-house, with the appurtenances*, to the said twelfth day of February A. D. 1790, notwithstanding a certain notice theretofore, to wit, on the tenth of November A. D. 1788, given by the said John to the said William, of his intention to quit, and that he the said John would quit and deliver up to the said William the possession of the said premises upon the said twelfth day of A. D. 1789; and being so indebted, he the said John, in consideration thereof, afterwards, to wit, on the twelfth day of February A. D. 1790 aforesaid, at Preston aforesaid, in the county aforesaid, undertook, and faithfully promised the said William, to pay him the said sum of eighty pounds (the double rent) whenever afterwards he the said John should be thereunto requested. (2d Count, for double rent due twelfth of May, omitting the words in italic. 3d Count, use and occupation generally, *quantum meruit* thereto; common money Counts; and common conclusion.)

Declaration in
assumpsit for the
double rent, under
stat. 11. Geo. II.
c. 19. s. 18. a-
gainst the te-
nant, for not
delivering up
possession of
premises pursu-
ant to his notice.

SURRY, to wit. Andrew Foster, late of, &c. was attached to answer Henry Hill in a plea of trespass on the case, &c. and thereupon, &c. for that said defendant, after the twenty-fourth of June mentioned in a certain act of parliament made in the eleventh year of the reign of his late majesty king George the Second, entitled, "An act for the more effectual securing the payment of rents, and preventing frauds by tenants," to wit, on the day of A. D. at and in the parish of in the county of S. aforesaid, and by force of the statute in such case made and provided, became and was indebted to said plaintiff in a large sum of money, to wit, the sum of [double the annual rent] of lawful, &c. for the use and occupation of a certain messuage or, &c. of him said plaintiff, situate at and in the parish and county aforesaid, with the appurtenances, by him said defendant, from the day of in the year of (when he held said messuage, or, &c. with the appurtenances of said plaintiff, as his tenant thereof, at the yearly rent of pounds, and on and at which said last-mentioned day said defendant had given notice to said plaintiff, that he would quit and deliver up the possession of said messuage, or, &c. with the appurtenances, which he neglected and refused to do) until and upon the day of in the year aforesaid, had used, occupied, possessed, and enjoyed; and being so indebted, he said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at and in the

the parish aforesaid, undertook, and faithfully promised said plaintiff to pay him said sum of pounds so due as aforesaid, when he the said defendant should be thereto afterwards requested. (2d Count, for use and occupation generally; and common conclusion.)

A Declaration had been drawn founded on this statute in debt; but as the statute gives the same remedy for the double rent as the landlord was entitled to for the single (a), Mr. Lawes, in the case of Foster and Hill, drew this declaration in assumpsit for the double rent.

(a) The landlord may distress for the double rent under this act of 11. Geo. II. c. 19. s. 18. though under the statute 4. Geo. II. c. 28. he is put to his action. Vide 3. Burr. 1603, &c.

As this case is attended with many uncertainties in respect to the demise and notice, it may be advisable to declare for use and occupation generally, which,

as the statute on which the action is brought enacts that the double rent may be recovered in the same manner as the single, will, I think, answer all the purposes of a special declaration in debt: but then a difficulty arises, whether even the general Counts should not make some mention of the statute; which I think they should, and under that idea have declared in two different ways, one on the statute, and the other in the ordinary and usual manner, under one of which the plaintiff must certainly recover. As the action, or at least some part thereof, is founded on a penal statute, it must be laid in the proper county, and not in Middlesex. V. LAWES.

FOR that whereas said defendant, after the twenty-fourth of June in the year 1738, mentioned in a certain act of parliament made in the eleventh year of the reign of his late majesty king George the Second, entitled, &c. to wit, on the twenty-fifth of March A. D. 1784, at the parish of, &c. and by force of the statute in such case made and provided, became and was indebted to said plaintiff in a large sum of money, to wit, the sum of nine pounds of lawful, &c. for the use and occupation of certain rooms and apartments, (on the twenty-fifth of December A. D. 1783, held by said defendant, as tenant thereof to said plaintiff, at and under the yearly rent of eighteen pounds, payable quarterly, one part and parcel of a certain messuage or dwelling-house of him said plaintiff, situate in the parish and county aforesaid,) by said defendant, at his special instance and request, for a long space of time, to wit, from said twenty-fifth of December in the year 1783 until said twenty-fifth day of March in the said year 1784, had used and occupied, possessed and enjoyed; notwithstanding a notice thentofore given by said defendant to said plaintiff of his intention to quit, and that he said defendant would quit and deliver up unto said plaintiff the possession of the said room, or, &c. upon the said twenty-fifth of December 1783; and being so indebted, he said defendant, in consideration thereof, afterwards, to wit, on said twenty-fifth of March 1784, at, &c. aforesaid, undertook, &c. &c.

Another form of declaration in assumpsit for double rent, on the same statute, against tenant for not quitting possession, pursuant to notice which he had given to plaintiff.

V. LAWES.

On SPECIAL CONTRACTS and SECURITIES relating to PERSONS, and to REAL and PERSONAL PROPERTY, in Consideration of the SALE, ASSIGNMENT, USE, DEMISE, HIRE, and CONVEYANCE of LANDS, HOUSES, &c. and for DECEIT in the SALE, &c.

Declaration by Plaintiff, who was possessed of a public inn, against Defendant, who had agreed to take the inn of plaintiff for the remainder of plaintiff's term, and to take the stock in trade at fair valuation. Plaintiff and defendant nominated three persons each, to appraise the stock, but defendant afterwards refused to fulfil his agreement.

MIDDLESEX, to wit. D. S. v. A. C. For that whereas the said D. long before and at the time of the making of the agreement, and the promise and undertaking hereinafter next mentioned, and afterwards, was lawfully possessed of and in a certain messuage or public inn, called the White Hart Inn, together with a certain garden and certain meadows thereto belonging, with the appurtenances, situate, lying, and being in the parish of R. in the county of H. for the residue and remainder of a certain term of years, whereof was to come and unexpired one year from Michaelmas 1787, at the yearly rent of fifty pounds, and, during the time aforesaid, was lawfully possessed of and in divers, to wit, twenty acres of land with the appurtenances, situate, lying, and being in the parish of R. aforesaid, in the said county of H. for the residue and remainder of a certain term of years, whereof was to come and unexpired one year from Michaelmas 1787; and during all the time aforesaid was and still is lawfully possessed of the stock in and upon the aforesaid premises, consisting of household furniture, wine, ale, porter, and other liquors, and divers coaches and other carriages, horses, mares, geldings, and other goods and materials of great value, to wit, of the value of two thousand pounds of lawful money of Great Britain, to wit, at, &c. in, &c.; and the said D. being so possessed of and in the said messuage or public inn, called the White Hart Inn, the garden and meadow as aforesaid, and also of and in the said twenty acres of land with the appurtenances, and the aforesaid stock as aforesaid, afterwards, to wit, on, &c. at, &c. it was agreed by and between the said plaintiff and the said defendant in manner and form following, that is to say, the said plaintiff agreed to let to the said defendant the said messuage or public inn called, &c. in the parish of, &c. during the remainder of his the said plaintiff's lease, which was for one year from Michaelmas 1787, at the yearly rent of fifty pounds, together with the said meadows belonging to the said messuage or public inn, agreeable to his the said plaintiff's lease; and the said plaintiff then and there further agreed to engage himself to the said defendant under a forfeiture of one hundred pounds for him the said defendant, to hold the same messuage or public inn after the expiration of the said Daniel's present lease a further term of seven years, at the same yearly rent of fifty pounds, and the said defendant to take the aforesaid stock of the said plaintiff at a fair valuation by two persons or more, whom they should appoint; and the said defendant on the other part agreed to take the

said

said plaintiff's stock, consisting of, &c. at a fair valuation, and to pay for the same as hereafter mentioned, that is to say, one half of the value of the whole should be paid immediately on the said defendant's taking possession, and the other half should be paid on that day twelve months after his taking possession, withholding one hundred pounds of the last payment till such time the said plaintiff should secure to the said defendant the lease of the aforesaid messuage or public inn, and garden and meadow, with the appurtenances as aforesaid, for the term of seven years after the expiration of the said present lease, at the old rent of fifty pounds from the proprietor; and the said defendant then and there agreed to accept the said twenty acres of land, more or less, in addition to the aforesaid messuage or tenement, or public inn, with the garden and meadows with the appurtenances, as in the said present lease, at the rate of twenty shillings per acre, &c. &c. (Go on with the agreement to the end, which was, that plaintiff should clear the premises of all taxes, &c. should get the lease renewed, &c. and either party not fulfilling the agreement was to forfeit one hundred pounds.) And the said agreement being so made as aforesaid, he the said defendant, in consideration thereof, and also in consideration that the said plaintiff then and there, to wit, on, &c. at, &c. in, &c. had undertaken, and faithfully promised the said defendant to do, perform, and fulfil every thing in the said agreement contained on the part and behalf of the said plaintiff to be done, performed, and fulfilled, undertook, and then and there faithfully promised the said plaintiff to do, perform, and fulfil every thing in the said agreement contained on the part and behalf of the said defendant to be done, performed, and fulfilled. And the said plaintiff in fact says, that he the said plaintiff afterwards, and after the making of the said agreement, and in pursuance thereof, to wit, on, &c. at, &c. did nominate and appoint one J. T. on his part and behalf, to value and appraise the household furniture and other goods, part of the said stock of the said plaintiff; and the said defendant afterwards, to wit, on, &c. at, &c. did nominate and appoint one H. S. on his part and behalf, to value and appraise the said household goods and furniture, and other goods, part of the stock of the said plaintiff: and although the said J. T. and H. S. afterwards, to wit, on, &c. at, &c. in, &c. did begin and proceed in the valuing and appraising of the said household furniture and other goods, part of the said stock; and the said plaintiff then and there, to wit, on, &c. at, &c. did nominate and appoint one W. S. on his part and behalf, to value and appraise the said wine, part of the said stock; and the said defendant did then and there, to wit, on, &c. at, &c. nominate and appoint one J. C. on his part and behalf, to value and appraise the said wine, part of the said stock; and the said plaintiff then and there, to wit, on, &c. at, &c. did nominate and appoint one J. S. on his part and behalf, to value and appraise the horses, &c. residue of the said stock; and the said defendant then and there, to wit, on, &c. at, &c. did nominate and appoint one O. S. on his part and behalf, to

(In ad Count,)
 "one T.S. J.S.
 and W.S. on his
 part and behalf,
 to value and ap-
 praise the said
 last-mentioned
 stock; and the
 said defendant
 afterwards, to
 wit, on, &c.
 did nominate
 and appoint one
 H. S. J. C. and
 O. S. on his part
 and behalf, to
 value and ap-
 praise the said
 last-mentioned
 stock."

value and appraise the said horses, &c. residue of the said stock; and although he the said plaintiff hath always, from the time of the making of the said agreement hitherto, been ready and willing, and still is ready and willing, to give possession of the said premises with the appurtenances to the said defendant, and afterwards, to wit, on, &c. at, &c. offered to give possession of the aforesaid premises with the appurtenances to the said defendant, according to the form and effect of the said agreement: Yet the said defendant, not regarding his said promise and undertaking so made by him as aforesaid, but contriving, &c. the said plaintiff

(In 2d Count,) In this behalf, did not permit and suffer the said J. T. and H. S. to value or appraise, or proceed in the valuing and appraising of the said household goods and furniture, part of the said stock, or any part thereof, according to the form and effect of the said agreement; but on the contrary thereof, on, &c. at, &c. he the said defendant prevented and hindered, and wholly discharged and dismissed, the said J. T. and H. S. and each of them, from proceeding in the valuing and appraising the said household furniture and other goods, part of the said stock as aforesaid, contrary to the form and effect of the said agreement, and the said promise and undertaking so by him the said defendant made as aforesaid, and did not permit or suffer the said W. S. and J. C. to value or appraise, or proceed in the valuing or appraising, the said wine, part of the said stock, or any part thereof, according to the form and effect of the said agreement; but on the contrary thereof, on, &c. at, &c. prevented and hindered, and wholly discharged and dismissed, (1) the said W. S. and J. C. from valuing and appraising of the said wine, part of the said stock as aforesaid, contrary to the form and effect of the said agreement, and the said promise and undertaking of the said defendant so by him made as aforesaid; and did not permit or suffer the said J. S. and O. S. to value or appraise, or proceed in the valuing or appraising, of the said horses, &c. residue of the said stock, or any part thereof, according to the form and effect of the said agreement; but on the contrary thereof, on, &c. at, &c. prevented and hindered, and wholly dismissed and discharged, the said J. S. and O. S. from appraising and valuing of the said horses, &c. residue of the said stock as aforesaid, or any part thereof as aforesaid, contrary to the form and effect of the said agreement, and the said promise and undertaking so made by the said defendant as aforesaid; and the said defendant continually, from thenceforth hitherto, hath refused, and still doth refuse, to take the aforesaid stock, or any part thereof, at a fair appraisement or valuation, or in any other manner whatsoever; nor did he the said defendant on, &c. or at any other time whatsoever, accept or receive possession of the said premises with the appurtenances, or of any part thereof, according to the form and effect of the said agreement, although often requested so to do, but on the contrary thereof, wholly neglected and refused so to do, contrary to the form and effect of the said agreement, and of the said promise and undertaking

the said J. T.
J. S. W. S. H. S.
J. C. and O. S.
of any or either
of them to va-
lue or appraise,
or proceed in the
valuing or ap-
praising of the
said last-men-
tioned stock, or
any part there-
of."

(1) In 2d Count,
"the said J. T.
J. S. W. S. H. S.
J. C. and O. S.
from valuing or
appraising, or
proceeding in
the valuing or
appraising of the
said last-men-
tioned stock as
last aforesaid."

undertaking so made by the said defendant as aforesaid, to wit, at, &c. in, &c.; and by reason and means of the making of the said agreement be the said plaintiff hath wholly declined, and been prevented and hindered from letting, and contracting for the letting, of the aforesaid premises with the appurtenances, and the selling and disposing of his aforesaid stock to divers persons, and who would have contracted and agreed for the same; and the said plaintiff hath by reason thereof lost and been deprived of divers other advantageous offers and terms of the disposal of the said premises and stock with the appurtenances, to wit, at, &c. And whereas, &c. &c. (Second Count same as the first, only omitting what is in italics, and inserting in lieu thereof what is in the margin.) And whereas, &c. (Goods sold and delivered, and quantum meruit. Add the money Counts.)

Drawn by MR. GRAHAM.

I Find it necessary to abridge as in the margin of this Declaration. The Student comes the least conversant even in the common Counts, will see the use of it as soon as he be-

SUSSEX, to wit. For that whereas on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would let to hire to the said defendant, and would permit the said defendant to hold, use, occupy, possess, and enjoy a certain ready-furnished messuage or dwelling-house, with a stable and barn, and appurtenances thereto belonging, of the said plaintiff, situate, lying, and being in the parish of, &c. together with the furniture, goods, chattels, and effects of and belonging to the said plaintiff, in and upon the same for a long space of time, to wit, for the space of three months then next following, at and after the rate or price of two guineas for each and every week of the said three months, amounting in the whole at and after the rate or price aforesaid to a large sum of money, to wit, the sum of twenty-four guineas, to be therefore paid by the said defendant to the said plaintiff, the said defendant undertook, and then and there faithfully promised the said plaintiff to hire of him the said plaintiff the said premises with the appurtenances for the aforesaid term of three months then next ensuing, and that the said defendant would pay for the same at and after the rate or price aforesaid. And the said plaintiff avers, that he, relying on the said promise and undertaking of the said defendant, and in hopes of the faithful performance thereof, did afterwards, to wit, on, &c. let to hire to the said defendant the said ready-furnished messuage or dwelling-house, stable and barn, with the appurtenances, together with the said furniture, goods, chattels, and effects of and belonging to the said plaintiff in and upon the same in manner aforesaid, and was then and there, and always afterwards, ready and willing to permit and suffer the said defendant to have, hold, &c. the same, for the said term of three months next ensuing, to wit, at, &c. And the said plaintiff in fact says, that although the said defendant afterwards, to wit, on, &c. did enter into and upon the said demised messuage or dwelling-house

Declaration v. Defendant, who had hired a ready-furnished house of plaintiff for three months at two guineas per week, for only staying in the house one month, and refusing to pay any RENT.

with the appurtenances, and became and was possessed thereof for the term aforesaid; and although she the said defendant staid and continued therein for part of the said term, to wit, for the space of three weeks then next following, to wit, at, &c.: Yet the said defendant, not regarding, &c. but contriving, &c. did not nor would not stay or continue in the said messuage or dwelling-house for the residue and remainder of the said term of three months, or any part thereof, although often requested so to do, but hath wholly refused so to do, and hath therein wholly failed and made default; nor hath she the said defendant yet paid to the said plaintiff the said sum of twenty-four guineas, or any part thereof, although afterwards, to wit, on, &c. and often afterwards, at, &c. requested so to do; but to pay the same, or any part thereof, to the said plaintiff, she the said defendant hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid. (2d Count, *Indebitatus Assumpsit*; 3d, *Quantum meruit*, Add the common Counts.) *Drawn by MR. GRAHAM.*

A special assumpsit in C. B. In consideration that plaintiff would discharge defendant from an agreement entered into between them for the taking of a public-house; defendant undertook to pay plaintiff a sum of money. Breach, non-payment.

MIDDLESEX, to wit. John Tinnimore, late of the parish of St. Matthew, Bethnal-green, in the county of Middlesex aforesaid, victualler, was attached to answer to Thomas Jordan in a plea of trespass on the case; and thereupon the said Thomas, by his attorney, complains, that whereas, before the time of making of the promise and undertaking of the said J. hereafter next mentioned, he the said Thomas was lawfully possessed of and in a certain messuage or tenement with the appurtenances, commonly called or known by the name or sign of The Bell, situate, lying, and being in a certain place or street called Fleet-street, in the city of London, to wit, at *Westminster*, in the county of *Middlesex* aforesaid: And whereas the said Thomas, being so possessed of the said messuage or tenement with the appurtenances, afterwards, whilst he was so possessed thereof, to wit, on the first day of April A. D. 1774, by a certain agreement, bearing date the day and year last aforesaid, on that day, to wit, at Westminster aforesaid, made between the said T. of the one part and the said J. of the other part, *demised* and let unto the said John the said messuage or tenement with the appurtenances, to hold to him the said John from the twenty-fifth day of March then last past, for and during the term of one year from thence next ensuing, and fully to be complete and ended, and from and after the expiration of the said term of one year, until either of the said parties should give three months notice in writing to the other of them to quit the said premises, at the said yearly rent of forty-five pounds, free of all taxes, to wit, at Westminster aforesaid: And whereas the said John, after the making of the said agreement, refused to enter into and take possession of the said premises thereby demised to him, in manner and for the term aforesaid, to wit, at Westminster aforesaid; and thereupon afterwards, to wit, on the day of in the year of our Lord 1775 aforesaid, to wit, at Westminster aforesaid, in consideration that the said T. at the special instance and request

request of the said John, would discharge him the said John from the said agreement, and let and demise the said premises to some other person whom the said Thomas should approve, he the said John then and there, to wit, on the day and year last aforesaid, undertook and faithfully promised the said T. to pay to him the said T. a large sum of money, to wit, the sum of eleven pounds five shillings of lawful, &c. within the space of nine days from the day and year last aforesaid, as a satisfaction to the said T. for his the said John's not performing the said agreement. And the said T. avers, that he, confiding, &c. did afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid, discharge the said John of and from the said agreement, and let and demise the said premises to another person; whereof the said T. afterwards, to wit, on the day and year last aforesaid, at Westminster, had notice: by means whereof, and according to the tenor and effect of the said promise and undertaking of the said J. so by him made in this behalf as aforesaid, he the said J. then and there became liable to pay, and ought to have paid, to the said T. the said sum of eleven pounds five shillings, within the space of nine days from the day and year last aforesaid, to wit, at Westminster aforesaid. (2d Count same as first, on a consideration *executed*. 3d Count, in consideration that he would let, &c. to some person other than defendant, he undertook to pay, &c. on request. 4th Count as 3d, only on consideration *executed*. Money laid out, had and received, lent; and common conclusion to the whole.)

C. RUNNINGTON,

LONDON, to wit. Richard Williams complains of Thomas Penny, being, &c. for that whereas the said Thomas, before and at the time of making the agreement, and his promise and undertaking hereafter next mentioned, was possessed, (that is to say, for the residue and remainder of a certain term then to come and unexpired therein) of a certain messuage or dwelling-house, and premises, commonly called and known by the name or sign of the Fox, situate and being in Duke-street in the parish of St. George, Bloomsbury, in the county of Middlesex, and in which said messuage or dwelling-house and premises he the said Thomas then and there exercised and carried on the business of a victualler, and the said Thomas was then and there possessed of certain household furniture, fixtures, porter, ale, amber, and other liquors of him the said Thomas, then being in the said messuage or dwelling-house and premises, to wit, at, &c.: And whereas the said Thomas, being so possessed of the said messuage or dwelling-house, and of the said household furniture, fixtures, porter, ale, amber, and other liquors as aforesaid, it was heretofore, to wit, on the twenty-second day of May in the year of Our Lord 1789, at, &c. aforesaid, agreed by and between the said Richard and the said Thomas in manner and form following, that is to say, the said Thomas, for and in consideration of the sum of ten guineas, that

Declaration on agreement and assumpsit in nature of decret where the defendant had no right to assign over a lease of a public-house, for the remainder of a term which he had agreed to sell to plaintiff.

is to say, the sum of ten pounds ten shillings of lawful, &c. and of the further sum of ninety guineas, that is to say, the sum of ninety-four pounds ten shillings, of like lawful, &c. to be paid also at the time hereafter mentioned by the said R. to the said T. did agree, at the joint expence of the parties, to *sell* and *assign* over the lease of all that the said messuage, or dwelling-house and premises, situate as aforesaid, unto the said Richard on or before the eighth day of June then ensuing, that is to say, the eighth day of June in the year aforesaid, for all the remainder of the term then to come and unexpired, subject to the rent and covenants contained in the said lease, the rent and taxes which should or might be due being first paid up and discharged by the said T. to the time of the delivery of the possession thereof unto the said Richard; and the said T. did also then and there agree, within the time aforesaid, to sell unto the said Richard all the household furniture and fixtures (except certain fixtures, then and there agreed to be excepted) by fair appraisement to be made by two appraisers, one to be chosen by each party; and if the two chosen should not agree in their valuation, they the said appraisers to chuse an umpire, whose determination should be final and binding to all parties; and the said T. also then and there agreed, within the time aforesaid, to *sell* unto the said Richard the porter, not exceeding sixty butts, at thirty shillings per barrel; ale, amber, not exceeding twelve pounds; and wines, brandy, and spirituous liquors, not exceeding thirty pounds, at fair gauge and value, to be made by two coopers in the customary manner; and the said Richard did then and there agree with the said Thomas to *accept an assignment* of the said lease, and also to pay for the goods and fixtures, with the stock of porter not exceeding sixty butts, and ale, amber, wines, and spirituous liquors, according to the valuation; and also to pay unto the said Thomas the further sum of ninety guineas, that is to say, the further sum of ninety-four pounds ten shillings of like lawful money, &c. on delivery of the said premises, goods, stock, &c.; and the said Thomas was likewise to assign over to the said Richard the beer-licence, on being paid for the time to come therein, and likewise mend the damaged windows: and it was then and there further agreed, that all expences should be paid share and share alike; and the said Thomas then and there agreed with the said Richard to keep open the aforesaid house and premises, and retail the liquors, porter, ale, and amber, to the customers as usual, to the time of the delivery of the possession of the said premises unto the said Richard; and lastly, it was then and there mutually agreed on by and between the said Richard and Thomas, that if either of them should refuse or neglect to comply with or perform all and every the articles and agreement before mentioned on their respective parts to be performed, the party so refusing should forfeit and pay to the other of them on demand, the sum of one hundred pounds for the non-performance of the foregoing agreement. And the said agreement being so made as aforesaid, afterwards, to wit, on, &c. at, &c. in consideration that the said Richard, at the
Special

special instance and request of the said Thomas, had then and there undertaken and faithfully promised the said Thomas to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled, he the said Thomas then and there undertook, and faithfully promised the said Richard, that the said Thomas had then and there a *lawful right* to sell and assign the afore said lease of the said messuage or dwelling-house to the said Richard, and that he would perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled: and although the said Richard hath always, from the time of making the said agreement hitherto, well and truly performed and fulfilled the same in all things therein contained on his part and behalf to be performed and fulfilled, to wit, at London aforesaid, in the parish and ward aforesaid: Yet the said Thomas, contriving and fraudulently intending to injure the said Richard, did not perform or regard the said agreement, or his said promise and undertaking so by him made in manner and form aforesaid, but thereby craftily and subtilly *deceived* the said Richard in this, to wit, that he the said Thomas, at the time of the said agreement, and his promise and undertaking aforesaid, had not a lawful right to sell or assign over the aforesaid lease of the said messuage, or dwelling-house and premises, to the said Richard, whereby the said Thomas was hindered and prevented from selling or assigning over the same, or performing the said agreement on the part and behalf of him the said Thomas; and, by means of the several promises aforesaid, he the said Richard not only lost and was deprived of all the profits, benefits, and advantage which might and would otherwise have arisen and accrued to him from the performance of the said agreement on the part and behalf of the said Richard, but was forced and obliged to, and did necessarily lay out and expend a large sum of money, to wit, the sum of twenty pounds of lawful, &c. in and about the appraisement and valuation of the said household furniture, fixtures, porter, ale, amber, and other liquors aforesaid; and otherwise, to wit, at, &c. aforesaid, (Add money Counts, and common conclusion.)

Drawn by Mr. Tinn,

CUMBERLAND, to wit. Benjamin Gordon, clerk, and Sarah his wife, complain of Thomas Batten, being in the custody, &c. of a plea of trespass on the case; for that whereas before and at the time of making of the promise and undertaking hereafter next mentioned, the said B. and S. in right of the said S. was seised, that is to say, in their demesne as of fee, of and in the parcel of ground hereafter mentioned to be conveyed: and whereas also before and at the time of making the agreement hereafter next mentioned, the said Thomas was and acted as surveyor of the highways in Wigton quarter, in the parish of Wigton, in the county of Cumberland, under and by virtue of the statute in that case made and provided, to wit, at W. aforesaid, in the county aforesaid, And whereas the said B. and S. being so seised of the said

Declaration on an agreement to sell to defendant, as surveyor of the highways, a piece of ground to be laid into the highway, for not paying plaintiff at the rate of 40 years purchase, according to agreement.

ground]

ground as aforesaid, and the said Thomas being such surveyor as aforesaid, heretofore, to wit, on the first day of May A. D. 1792, at W. aforesaid, in the county of C. aforesaid, it was agreed by and between the said B. and S. and the said Thomas as such surveyor as aforesaid, according to the form of the statute in that case made and provided, that the said B. and S. should sell to the said Thomas, and the said Thomas should buy of the said B. and S. a certain quantity of ground, to wit, five perches of the said ground of the said Benjamin and Sarah, situate, lying, and being in the township of W. in the parish of W. aforesaid, in the county aforesaid, of a large yearly value, to wit, of the yearly value of twenty shillings, to be by the said Thomas, as such surveyor, laid into a certain road or highway thereto adjoining, in the said township; and that the said Thomas should and would pay to the said Benjamin and Sarah for the same at and after the rate of forty years purchase for the said yearly value of the said piece of ground. And the said agreement being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, at W. aforesaid, in the county aforesaid [Mutual promises]. And the said B. and S. aver, that they the said B. and S. confiding in the said agreement, promise, and undertaking, of the said Thomas in that behalf made as aforesaid, afterwards, to wit, on the day and year aforesaid, at W. aforesaid, in the county aforesaid, did accordingly sell and transfer to the said Thomas, and that the said Thomas did then and there buy and take of the said B. and S. the said parcel of ground for the purpose aforesaid, and laid the same into the said road or highway, and separated and fenced off the same from other the lands of the said B. and S. to wit, at W. aforesaid, in the county aforesaid, whereby, and by force of the statute in that case made and provided, the said ground became for ever divested out of them the said B. and S. and became a part of the said highway: by reason of which said several premises he the said Thomas became liable to pay to them the said B. and S. for the said ground, being of the value aforesaid, a large sum of money, to wit, the sum of fifteen pounds, being at and after the rate of forty years purchase for the same; and being so liable, &c. assumpsit accordingly. (2d Count, for lands bargained and sold, and *quantum meruit*. Money had and received; account stated; and common conclusion.)

THOMAS BARROW,

On a special agreement to demise a slaughter-house to plaintiff for a year. Breach for expelling him before the end of the year.

MIDDLESEX, to wit, &c. For that whereas the said E. before and at the time of making the agreement hereafter next mentioned, was lawfully possessed of a certain slaughter-house with the appurtenances, situate and being in the parish of, &c. for a certain term then to come unexpired therein, to wit, at the parish aforesaid: and whereas the said E. being so possessed of the said premises with the appurtenances, it was afterwards, and whilst the said E. was so possessed thereof, to wit, on, &c. at, &c. aforesaid, agreed by and between the said E. and the said J. that

the said E. should let unto the said J. and that the said J. should take of and from the said E. the said premises with the appurtenances, as her tenant thereof, and that the said E. should suffer and permit the said J. peaceably and quietly to have, hold, use, occupy, possess, and enjoy, and that he the said J. should and would hold and enjoy the said slaughter-house of the said E. with the appurtenances, as tenant thereof to the said E. for the space of one whole year from thence, to wit, from the day and year next ensuing, and fully to be complete and ended, and under a certain rent to be therefore paid and payable by the said J. to the said E. to wit, at, &c. aforesaid. And the said agreement being so made, &c. &c. (Mutual promises). And the said J. in fact says, that the said agreement being so made, he the said J. did, under and by virtue, and in pursuance thereof, after the making of the said agreement, to wit, on the same day and year aforesaid, at, &c. aforesaid, enter into and upon the said demised premises with the appurtenances, and became and was thereof possessed, and continued so thereof possessed, under and by virtue of the said agreement, until the time of the committing of the grievance hereafter next mentioned, to wit, at, &c. aforesaid: and although he the said J. hath always, from the time of the making of the said agreement hitherto, well and truly performed and fulfilled the said agreement in all things therein contained on his part and behalf to be performed and fulfilled, and according to the tenor and effect, true intent and meaning, of the said agreement, to wit, at, &c. aforesaid: Yet the said J. in fact further saith, that the said E. not regarding the said agreement, nor her promise and undertaking so by her made, &c. but contriving, &c. she the said E. hath not permitted the said J. peaceably or quietly to have, hold, use, occupy, possess, and enjoy the said premises with the appurtenances, by the said agreement demised to the said J. in manner aforesaid, or any part thereof, for and during the said term of one year in the said agreement mentioned, (although to perform the said agreement, and her said promise and undertaking, &c. she the said E. was requested by the said J. afterwards, to wit, at the parish aforesaid,) but she the said E. to do this hath hitherto wholly refused; and on the contrary thereof, did afterwards, and during the term of one year by the said agreement granted, and in the said agreement mentioned, and whilst the said J. was so possessed of the said demised premises with the appurtenances, under and by virtue of the said agreement, to wit, on, &c. and under and on divers other days and times between that day and the end of the said term of one year by the said agreement granted and therein mentioned, to wit, at, &c. aforesaid, wrongfully and unjustly, and without the leave or licence, and against the will of the said J. entered into and upon the possession of the said J. of the said slaughter-house with the appurtenances, in the said agreement mentioned, and expelled, put out, and removed the said J. from the possession and occupation thereof, and kept and continued the said J. out and from the possession and occupation of the said premises with the

ad Count on a
consideration
executory.

the appurtenances for a long space of time, to wit, from the day and year last aforesaid, for and during all the rest, residue, and remainder of the said term of one year so to him demised thereof as aforesaid, and then to come therein and unexpired; whereby he the said John, during all that time, that is to say, from the said, &c. to the end of the said term of one year, by the said agreement granted and demised as aforesaid, and then to come therein and unexpired, to wit, at, &c. and was deprived of the use, benefit, enjoyment, and advantage of the said slaughter-house with the appurtenances, which would have otherwise resulted and accrued to him therefrom, to wit, at, &c. aforesaid. And whereas the said E. before and at the time of the making of the promise and undertaking of the said E. hereafter next mentioned, was lawfully possessed, &c. (as before): And whereas the said E. being so possessed of the said premises with the appurtenances, afterwards, to wit, on, &c. at, &c. aforesaid, in consideration that the said E. at the special instance and request of the said J. would take of and from the said E. the said premises with the appurtenances, to hold the same as tenant thereof to her the said E. for the space of one whole year from thence, to wit, from the day and year aforesaid next ensuing, and fully to be complete and ended, at and under a certain rent to be therefore paid for by the said J. to the said E. to wit, at, &c. aforesaid, she the said E. then and there undertook, and faithfully promised the said J. to let the said premises with the appurtenances to him the said J. and to suffer and permit the said J. peaceably and quietly to have, hold, use, occupy, possess, and enjoy the said premises with the appurtenances, as tenant thereof to her the said E. for the space of one whole year from thence, to wit, from the day and year last aforesaid next ensuing, and fully to be complete and ended. And the said J. in fact saith, that he, confiding, &c. did, after the making of the said promise and undertaking of the said E. to wit, on the day and year last aforesaid, at, &c. aforesaid, take of and from the said E. the said premises with the appurtenances, to hold the same as tenant thereof to her the said E. for the space of one whole year from thence, to wit, from the day and year last aforesaid next ensuing, and fully to be complete and ended, at and under a certain rent to be therefore paid by the said J. to the said E. to wit, at, &c. aforesaid; and that he the said J. did then and there, to wit, on the day and year last aforesaid, at, &c. aforesaid, enter in and upon the said demised premises with the appurtenances, and became and was thereof possessed, and ought to have been so possessed, for the said term of one year so thereof demised as aforesaid: and although he the said J. was always, from the time of making the said promises and undertakings, during the said term of one year, at, &c. aforesaid, ready and willing to hold, use, occupy, possess, and enjoy the said premises with the appurtenances, for and during the whole of the said term so to him thereof demised as aforesaid, to wit, at, &c. aforesaid: Yet the said J. in fact further saith, that the said E. not regarding, &c. but contriving, &c. (Same conclusion as that to the 1st Count,

Count, *mutatis mutandis*; Counts for money had and received, lent and laid out; and common conclusion to the last Counts.)

C. RUNNINGTON.

MIDDLESEX, to wit. Thomas Eaton complains of James Pierce, being, &c.; for that whereas before and at the time of the making of the promise and undertaking of the said James hereafter next mentioned, one Edward Matthews had let and demised unto the said Thomas, and the said Thomas had taken of the said Edward a certain messuage or dwelling-house called and known by the name of The Crown Ale-house, and divers, to wit, twenty acres of land with the appurtenances, situate, lying, and being in the parish of Enfield, in the county of Middlesex aforesaid; and which said premises, at the time they were so let and demised to and taken by the said Thomas as aforesaid, were in the tenure, occupation, and possession of the said James, as tenant thereof to the said Edward, to wit, at the parish aforesaid. And whereas heretofore, to wit, on the day of May A. D. 1770, to wit, at the parish aforesaid, a certain discourse was had and moved by and between the said Thomas and the said James of and concerning the said demise so made by the said Edward to the said Thomas of the said premises as aforesaid; and thereupon, in consideration that the said Thomas, at the special instance and request of the said James, would buy and take of and from him the said James so many of the goods of him the said Thomas then being on the said premises, so being in the possession of the said James as aforesaid, as he the said James should choose to part with, he the said James then and there, to wit, on the day and year last aforesaid, at the parish aforesaid, undertook and faithfully promised the said Thomas, that he the said James would *quit* possession of the said premises, and *deliver full possession* thereof to the said Thomas, on the request of the said Thomas. And the said Thomas avers, that although he the said Thomas, confiding in the said promise and undertaking of the said James so by him made in this behalf as aforesaid, was ready and willing to buy and take, and did afterwards, to wit, on the eleventh day of May in the year 1770 aforesaid, at the parish aforesaid, offer to buy and take of and from him the said James so many of the goods of him the said James, being on the said premises so in the possession of the said James as aforesaid, as he the said James should choose to part with, did then and there, to wit, on the day and year last aforesaid, at the parish aforesaid, request the said James to quit possession of the said premises, and to deliver possession thereof to him the said Thomas, and was then and there ready and willing, and offered to enter into and upon, and take possession thereof: Yet the said Thomas further saith, that the said James, not regarding his promise and undertaking so by him made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this behalf, he the said James did not nor would, on the day and year last aforesaid,

Special assumpsit in B.R. upon an agreement to quit and deliver up possession to plaintiff of certain premises, (which one A.B. had demised to plaintiff, and then in the occupation of defendant,) if plaintiff would buy certain goods upon the premises.

2d Count.

aforesaid, at, &c. aforesaid, when he was so requested as aforesaid for the purpose aforesaid, quit possession of the said premises, or deliver or give possession, nor hath he at any time since hitherto as yet delivered or given, or caused or procured to be delivered or given, possession; nor would he then and there suffer or permit, nor hath he at any time since hitherto as yet suffered or permitted the said Thomas to enter into or take possession of the said premises, or of any part thereof, but then and there retained and kept, and hath always from thence hitherto wholly retained and kept, and still doth retain and keep, the possession thereof, and from thence hitherto kept the said Thomas out of and from the same, and wholly prevented him from entering into the possession thereof, or of any part thereof, (although to perform his promise and undertaking so by him made in this behalf as aforesaid, he the said James was requested by the said Thomas as aforesaid afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at the parish of, &c.) but he to perform the same hath hitherto wholly refused, and still refuses so to do. (2d Count, stating that defendant held the premises of Matthews as his tenant thereof, and was in possession thereof; *colloquium* of and concerning the said premises, that defendant wanted to quit them, and that they were then to be let, as defendant then and there asserted; agreement, that if plaintiff should and would agree with Matthews to become his tenant in the place and stead of defendant, that the defendant would give and yield to plaintiff immediate possession on request.) Mutual promises aver that it was agreed accordingly, whereby plaintiff became tenant in the room of defendant, whereof defendant had notice: Yet, &c. (Breaches as before.) 3d Count recites possession in defendant, as in 2d; *colloquium*; special agreement, that if Matthews would let and demise the same to plaintiff, he the defendant would give him possession thereof on request; averment, &c. breach, &c. 4th Count recites that defendant was possessed of the premises, and thereupon demised the same to plaintiff for a year; and that although plaintiff was willing, and requested defendant to let him enter; yet, &c. (breach as before.) 5th Count, money lent, laid out, and received; and common conclusion to those Counts).

C. RUNNINGTON.

Demurrer book
in an action by
husband and
wife, executrix
of a former hus-
band, for use and
occupation in tes-
tator's lifetime.

Declaration.

HEREFORDSHIRE, to wit. Be it remembered, that on Friday next after the morrow of the Holy Trinity in this same Term, before our lord the king at Westminster, come James Lewis and Catharine his wife, executrix of the last will and testament of John Griffiths her late husband deceased, by Francis Eves their attorney, and bring into the court of our said lord the king now here, their bill against Samuel Morris, being, &c. in a plea of trespass on the case, and there are pledges for the prosecution, to wit, John Doe and Richard Roe; which said bill follows in these words, to wit, Herefordshire, to wit, James Lewis and Catharine his wife, executrix

executrix of the last will and testament of John Griffiths her late husband deceased, complain against Samuel Morris, being, &c.; for that whereas the said Samuel heretofore, to wit, on the twenty-first day of March in the year of Our Lord 1793, at Ross, in the said county of Hereford, was indebted to the said John in his lifetime in the sum of one hundred and eighty pounds of lawful money of Great Britain, for the use and occupation of a certain messuage or dwelling-house with the appurtenances, situate, standing, and being in the parish of All Saints, in the city of Hereford, by the said Samuel, at his special instance and request, and by the permission of the said John in his lifetime, for a long space of time, to wit, for the space of eight years then elapsed, had, held, used, occupied, possessed, and enjoyed: And being so indebted, he the said Samuel, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at Ross aforesaid, in the county aforesaid, undertook, and to the said John in his lifetime then and there faithfully promised to pay to him the said sum of money. (2d Count, a *quantum meruit*; 3d, money had and received; 4th, account stated.) Yet the said Samuel, not regarding his said several promises, and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in his lifetime, and the said Catharine, after the death of the said John, whilst she was sole and unmarried, and the said James and Catharine since the marriage celebrated between them, in this respect, hath not yet paid the said several sums of money, or any part thereof, to them or any of them, (although so to do he the said Samuel, by the said John in his lifetime, and by the said Catharine after the death of the said John whilst she was sole, and by the said James and Catharine after the marriage celebrated between them, to wit, on the first day of July in the year aforesaid, at Ross aforesaid, in the county aforesaid, was requested); but to pay the same, or any part thereof, to them, or any or either of them, the said Samuel hath wholly refused, and to pay the same to the said James and Catharine still doth refuse, to the damage of the said James and Catharine of one hundred and eighty pounds; and therefore they bring their suit, &c. And the said James and Catharine bring into court the letters testamentary of the said John, whereby it fully appears to the Court here, that the said Catharine is executrix of the said last will and testament, and hath the execution thereof, &c.

Conclusion by husband and wife, executrix of a former husband.

And the said Samuel, by Richard Broome his attorney, comes and defends the wrong and injury, when, &c. and says, that he did not undertake and promise in manner and form as the said James and Catharine hath above thereof complained against him, and of this he puts himself upon the country, &c. And for further plea in this behalf, by leave, &c. (*actio non*); because he says, that he did not undertake or promise at any time within six years next before the day of exhibiting the bill of them the said James and Catharine in manner and form as the said J. and C. have above thereof

Plea 1st, Non-assumpsit. ad, Non-assumpsit infra sex annos next before exhibiting plaintiff's bill.

thereof complained against him; and this the said Samuel is ready to verify; whereof he prays judgment, if the said J. and C. ought to have or maintain their aforesaid action thereof against him, &c. And for further plea in this behalf the said S. by like leave, &c. (*actio non*); because he says, that the said J. G. deceased in his lifetime, together with one John Weaver and one Edward Jones, before the exhibiting of the bill of the said J. and C. to wit, on the eleventh day of August in the year of Our Lord 1767, at Ross aforesaid, in the county aforesaid, by their certain writing obligatory sealed with their respective seals, and to the court of our lord the king now here shewn, the date whereof is the same day and year last aforesaid, acknowledged themselves to be held and firmly bound to Elizabeth Gritton of the parish of Madby in the said county of Hereford, spinster, in the sum of five hundred pounds of good and lawful money of Great Britain, to be paid to the said Elizabeth, or her certain attorney, executors, administrators, or assigns, and for which payment to be well and faithfully made they bound themselves, and *every of them, by himself for the whole*, their and every of their heirs, executors, and administrators, and every of them, firmly by the said writing obligatory, with a condition thereunder written, that if the said J. G. J. W. and E. J. or either of them, their or either of their heirs, executors, or administrators, did and would well and truly pay, or cause to be paid unto the said E. G. her executors, administrators, or assigns, the sum of two hundred and fifty pounds of good and lawful money of Great Britain *when she should attain the age of twenty-one years, or on the day of marriage*, which should first happen: And in case the said Elizabeth G. should happen to die before she should attain such her age of twenty-one years, or be married as aforesaid, that then, if the said J. G. J. W. and E. J. or either of them, their or either of their heirs, executors, or administrators, did and should pay, or cause to be paid unto the *legal representative* or representatives of the said E. G. the sum of two hundred and fifty pounds, clear of all deductions: *And also*, that if the said J. G. should and *would find and provide for the said E. G. until she should arrive to such her age of twenty-one years or day of marriage* as aforesaid, good, wholesome, and sufficient *meat, drink, washing*, and all other *necessaries*: AND also should and would take care to have the said Elizabeth *educated and instructed* in the best way and manner that he could, fitting for a person of her degree: that then the above written obligation to be void and of none effect, or else to be and remain in full force and virtue. And the said Samuel in fact says, that afterwards, and after the making the said writing obligatory, and *before the said Elizabeth had attained her said age of twenty-one years*, in the said condition of the said writing obligatory mentioned, to wit, on the first of July in the year of Our Lord 1775, at Ross aforesaid, in the county aforesaid, he the said Samuel intermarried with and took to wife the said Elizabeth, whereof the said J. G. in his lifetime afterwards, to wit, on the day and year last aforesaid, at Ross aforesaid,

That plain
tiff's testator in
his lifetime,
with one J. W.
and E. J. 11th
August 1767,
became jointly
and severally
bound to Eliza-
beth Gritton in
good condition-
ed for payment
of 250*l.* when
she should at-
tain the age of
21 years or mar-
ry, and for her
maintenance and
education in the
mean time.

That on the 1st
of July 1775 de-
fendant married
said E. G. she
not having then
attained the age
of 21 years, of
which plaintiff's
testator in his
lifetime had no-
tice.

in the county aforesaid, had notice. And the said Samuel further saith, that at the time of the death of the said J. G. and also at the time of the exhibiting of the bill of them the said J. and C. in this behalf, there (1) *was and now is justly and truly due and owing to the said Samuel from the said J. and C. upon and by virtue of the said writing obligatory*, for principal money and interest, a large sum of money, to wit, the sum of fifty-six pounds seven shillings and threepence, of lawful money of Great Britain, to wit, at Rofs aforesaid, in the county aforesaid. And the said Samuel further says, that the said J. G. deceased, in his lifetime, and at the time of his death, was, and that the said J. and C. as executrix as aforesaid, before and at the time of the exhibiting of the bill of them the said J. and C. in this behalf, were and still are justly and truly indebted unto him the said Samuel in the sum of five hundred pounds of like lawful money, for so much money by the said Samuel before that time paid, laid out and expended to and for the use of the said J. G. in his lifetime, at his special instance and request; and in the further sum of five hundred pounds of like lawful money, for so much money by the said Samuel before that time lent and advanced to the said J. G. in his lifetime, at his special instance and request; and in the further sum of five hundred pounds of like lawful money, for money by the said J. G. before that time, and in his lifetime, had and received to and for the use of the said Samuel; and in the further sum of five hundred pounds of like lawful money, for so much money due and payable from the said J. G. in his lifetime to the said Samuel upon the balance of an account before that time, and in the lifetime of the said J. G. stated and settled between the said Samuel and the said J. G. to wit, at Rofs aforesaid, in the county aforesaid; which said several sums of money, so due and owing to the said Samuel as aforesaid, exceed the damages sustained by the said J. and C. executrix as aforesaid, by reason of the non-performance of the several promises and undertakings in the said declaration mentioned; so much of which said several sums of money so due and owing to the said Samuel as aforesaid, as will be sufficient to satisfy the said J. and C. as executrix as aforesaid their said damages, the said Samuel will deduct and set off, according to the form of the statute in such case made and provided: and this he is ready to verify; wherefore he prays judgment if the said J. and C. executrix as aforesaid, ought to have or maintain their aforesaid action thereof against him, &c.

That in testator's lifetime and at the time of his death, and of exhibiting plaintiff's bill, there was, and yet is due and owing to the defendant, by virtue of the said writing obligatory, for principal and interest, 56l. 7s. 3d. and a further sum for money lent, paid, had, and received, and on account stated in testator's lifetime, which exceed plaintiff's demand, and out of which defendant offers to set off and deduct plaintiff's damages.

(1) A debt due to a man in right of his wife cannot be set off in an action against him on his own contract; Bull. N.P. 179. The Court, perhaps, draws a distinction between debts due to the wife before coverture, and to the husband in her right after. In the former it is held they must join; Co. Lit. 53. b. 354. Hardy v. Ro.

binson, 1. Keb. 89. 3. C. Sid. 299. Anon. Owen, 82. Per Lord Hardwick in Garforth v. Brindley, 2. Vez. 676. 2. Com. Dig. tit. Baron & Feme, Let. Y. In the latter the husband may sue alone; 1. Vern. 396. Sir John Britt against Cumberland, 3. Bulstr. 163. Oglander v. Bastin, 1. Vern. 396. Howel v. Maine, 3. Lev. 403. Qu. the difference between bringing an action for such debt and pleading it in bar? In the latter case, it must be a complete bar at the commencement of the suit and arrest, and continue so through every intermediate stage, to the end, independent of extrinsic circumstances to alter or change it. Co. Lit. 351. Vez. 676. 1. Bac. Abr. 289.

Replication, if
sue on defend-
ant's pleas, ex-
cept as to so
much of the
third as attempts
to set off the
money supposed
to be due to de-
fendant, by vir-
tue of the bond
therein men-
tioned; and spe-
cial demurrer to
that, because it
endeavours to
set off a debt due
and owing to
defendant and
Elizabeth his
wife, and that it
is otherwise in-
formal.

And as to the said plea of the said Samuel by him first above pleaded, whereof he hath put himself upon the country, the said J. and C. do the like, &c. And as to the said plea of the said Samuel by him secondly above pleaded in bar, the said J. and C. say, that they, by reason of any thing in that plea above alleged, ought not to be barred from having or maintaining their said action against him the said Samuel, because they say, that the said Samuel did, within six years next before the day of exhibiting the bill of them the said J. and C. undertake and promise in manner and form as the said J. and C. have above thereof complained against him: and this they pray may be enquired of by the country; and the said Samuel doth the like. And as to the said plea of the said Samuel by him lastly above pleaded in bar, the said J. and C. say, that they, by reason of any thing in that plea above alleged, ought not to be barred from having and maintaining their said action thereof against him the said Samuel as to so much of the said plea as endeavours to set off and deduct the said sum of money supposed to be due and owing to the said Samuel upon and by virtue of the said writing-obligatory in the said plea mentioned; the said J. and C. say, that the said part of the said plea, and the matters therein contained, are not sufficient in law to bar or preclude the said J. and C. from having and maintaining their said action thereof against the said Samuel; to which said part of the said plea, in manner and form as the same is above pleaded, they the said J. and C. are under no necessity, nor are they bound by the law of the land to answer: and this they are ready to verify; wherefore, for want of a sufficient plea in this behalf, the said J. and C. pray judgment and their damages by reason of the non-performance of the said several promises and undertakings to be adjudged to them, &c. And for cause of demurrer in law, according to the form of the statute in such case made and provided, shew to the Court here the causes following, that is to say, for that by the said part of the said plea the said Samuel has endeavoured and attempted to set off and deduct from the damages to be recovered against the said Samuel, by reason of the not performing the said promises and undertakings so made by the said Samuel as aforesaid, a debt due and owing to the said Samuel and Elizabeth his wife; and for that the said part of the said plea is in other respects insufficient and informal: and as to the residue of the said plea, the said James and C. say, that the said J. G. in his lifetime, or at the time of his death, was not, nor were the said J. and C. executrix as aforesaid, at the time of exhibiting the bill of them the said J. and C. or at any time since, indebted to the said Samuel in manner and form as the said Samuel hath above in that behalf alleged. And this they pray may be enquired of by the country; and the said Samuel doth the like.

THO. BARROW.

And

And the said Samuel since that he hath above, in his said plea by him lastly above pleaded in bar, alleged sufficient matter in law to bar the said J. and C. from having and maintaining their aforesaid action thereof against him, which the said Samuel is ready to verify; which said plea by him above pleaded in bar, and the matters therein contained, the said J. and C. have not denied, or in anywise answered thereto, but have wholly refused to admit the verification thereof: Therefore, as before, the said Samuel prays judgment if the said J. and C. executrix as aforesaid, ought to have or maintain their aforesaid action against him, &c. But because, &c.

Joinder in demurrer and issue.

MIDDLESEX, *ss.* John Collyer complains of Richard Wilks, being in the custody of, &c. in a plea of trespass on the case, &c. for that whereas, on the twentieth day of June A. D. 1781, at Westminster in the said county of Middlesex, it was agreed by and between the said John and the said Richard, that the said Richard should LET to the said John *all his right and interest of and in* certain premises known by the sign of the Glovers Arms, situate and being in Old-street in the parish of St. Luke, Old-street, in the said county of Middlesex, and then in the possession of him the said Richard, and that the said John should give fifteen pounds for the good-will of the trade of the said premises, and likewise take the goods and fixtures in, of, and belonging to the said premises, at a fair appraisement by two appraisers, or their umpire, and the stock in trade, such as brandies, runs, and compounds, not exceeding the value of five pounds, at a fair valuation; and that said Richard should pay up all rent and taxes to the time the said John should take possession of the said premises, which, it was mutually agreed between the said John and the said Richard, should be on or before the twenty-sixth day of June then instant, to wit, in the year 1781 aforesaid: and it was also then and there further agreed, by and between the said John and the said Richard, that if either of them should refuse to comply with every article of the said agreement, then the said party so refusing should and would pay to the other, or his order, the sum of nine guineas (that is to say, the sum of nine pounds nine shillings of lawful money of Great Britain). And the said agreement being so made, he the said John then and there, to wit, on the said twentieth day of June in the year aforesaid, at W. aforesaid, at the special instance and request of the said Richard, undertook and faithfully promised the said Richard to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and as a security, as well for the performance of the said agreement on his part, as to induce, and enforce and secure a performance thereof on the part of the said Richard, he the said John then and there deposited, in the hands of one Thomas Robinson, the sum of five pounds five shillings for the use of the said Richard, in case he the said John neglected or

Declaration in B. R. on a special agreement to let or assign his interest, &c. in a public-house on a certain day or forfeit nine guineas, plaintiff deposited five guineas in the hands of a third person to bind the agreement.

refused to perform the aforesaid agreement on his part: whereas upon the said Richard then and there, to wit, on the said twentieth day of June in the year 1781 aforesaid, at W. aforesaid, in consideration of the premises, undertook and faithfully promised the said John to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled. And the said John in fact saith, that although he the said John hath always been ready and willing to do and perform every thing in the aforesaid agreement contained on his part and behalf, according to the tenor and effect, true intent and meaning of the said agreement, and of his promise and undertaking in that behalf made as aforesaid; and on the twenty-sixth day of the said month of June in the year 1781 aforesaid, at Westminster aforesaid, was ready and willing, and offered to accept and take all the right, title, and interest of the said Richard of, in, and to the said premises in the said agreement mentioned, with the appurtenances, and to enter into and take possession of the same upon the terms in the aforesaid agreement specified; and then and there required the said Richard to let the same unto him the said John upon the terms, and according to the tenor and effect, true intent and meaning of the aforesaid agreement: Yet the said John in fact saith, that the said Richard did not, on the twenty-sixth day of June in the year 1781 aforesaid, nor has he at any other time whatsoever, *let his right, title, and interest of, in, and to the said premises in the said agreement mentioned, to him the said John, upon the terms, and according to the tenor and effect, true intent and meaning of the aforesaid agreement, or on any other terms whatsoever; but on the contrary the said Richard wholly refused so to do, and therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning of the said agreement: by reason whereof, and according to the tenor and effect, true intent and meaning of the aforesaid agreement, and the promise and undertaking of the said Richard in that respect made as aforesaid, he the said Richard became liable to pay, and ought to have paid to the said John, the sum of nine pounds nine shillings, the value of the said nine guineas so agreed to be paid by the party neglecting to perform the said agreement as aforesaid, to wit, at W. aforesaid; whereof the said Richard afterwards, to wit, on the twenty-seventh day of June in the year aforesaid, there had notice. Yet the said Richard, not regarding, &c. (Common conclusion for the nine pounds nine shillings.)*

Déclaration in C. B. on a special assumpsit to take a house and to purchase the goods, fixtures, &c. at an appraisement by two brokers, under a penalty.

MIDDLESEX, ff. James Thorp, late of, &c. was attached to answer unto William Dorman in a plea of trespass on the case; and thereupon the said William, by John Slacke his attorney, complains, that whereas the said William heretofore, to wit, on the twenty-fifth day of June A. D. 1783, was lawfully possessed of and in a certain house known by the name or sign of The Star and Garter, situate in a certain place called Palace-yard, in the said county of Middlesex, under and by virtue of a certain demise thereof

thereof thencefore made to him the said William, and then subsisting and undetermined, to wit, at Westminster, in the said county of Middlesex. And whereas the said William then and there carried on the trade and business of a victualler in the said house, and was lawfully possessed of certain fixtures, and of certain other goods and stock in trade, consisting of beer and spirituous liquors, then being in the said house, as of his own proper goods and chattels, and was then and there about to quit the said house and premises: and thereupon afterwards, to wit, on the day and year aforesaid, it was agreed by and between the said William and the said James, that the said William should dispose of (that is to say, to the said James) the said goods and fixtures of him the said William so being in the house known by the name of The Star and Garter ale-house as aforesaid, at a fair appraisement to be made by two brokers; and if they should not agree, then that they should choose a third person, whose determination should be final; and that he the said William should dispose of (that is to say, to the said James) the beer in the said house at the prime cost; the spirituous and other liquors, not exceeding in value ten pounds, at prices as per bills of parcels; and also x that the said William should clear goods and fixtures with the said broker of the said William: and although the said James was then and there requested by the said William to purchase and take the said goods, fixtures, and stock of liquors in the said agreement specified, and so by him agreed to be purchased as aforesaid, in the manner, upon the terms, and according to the tenor and effect of the said agreement: Yet the said William in fact saith, that the said James did not, when he was so requested as aforesaid, appoint, provide, or procure, nor hath he at any other time whatsoever hitherto appointed, provided, or procured any broker to appraise the said goods and fixtures in the said house, in the said agreement mentioned, on his part and behalf, according to the tenor and effect, true intent and meaning of the said agreement; nor did he, either on or before the said seventh day of July in the year 1783 aforesaid, purchase, nor hath he at any time since hitherto purchased the said goods and fixtures, together with the said stock and liquors so by him agreed to be purchased from the said William as aforesaid, or any or either of them, or any part thereof, in the manner, upon the terms, and according to the tenor and effect of the said agreement, or upon any other terms whatsoever; but on the contrary the said James hath hitherto wholly refused to take or purchase the same, or to enter into or take possession of the said house in the said agreement mentioned, contrary to the tenor, effect, and meaning of the said agreement: whereby, and by reason of which premises, and according to the tenor and effect of the said agreement, and of the said promise and undertaking of the said James, he the said James, upon his neglecting to fulfil the said agreement as aforesaid, that is to say, on the day and year last aforesaid, at Westminster aforesaid, in the said county of M. forfeited, and became liable to pay to him the said William, the said

1st Court for
the forfeiture.

ad Count gene-
ral (1).

(1) Luxton and
Robinson,
Doug. 998.

2d Count.

sum of twenty pounds so agreed to be forfeited and paid by the party neglecting to fulfil the said agreement as aforesaid, when he the said James should be thereto requested; whereof the said James afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, had notice. And whereas the said William heretofore, to wit, on the said twenty-fifth day of June A. D. 1783 aforesaid, was lawfully possessed (&c. as in the 1st Count, to this mark x; then proceed thus): Yet the said William in fact further saith, that the said James, not regarding the said last mentioned agreement, nor his promise and undertaking in that respect made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, did not, upon the said seventh day of July in the year 1783 aforesaid, enter into and take possession of the said house in the said last mentioned agreement specified; nor did he then, nor at any other time whatsoever, appoint, provide, or procure any broker to appraise the said goods and fixtures in the said house, in the said last mentioned agreement mentioned, on his part and behalf, according to the tenor, effect, and meaning of the said last-mentioned agreement; nor did he, either on or before the said seventh day of July in the year 1783 aforesaid, nor hath he at any time since, purchased from the said William the said goods and fixtures, together with the said stock of liquors so by him agreed to be purchased as last aforesaid, or any or either of them, or any part thereof, in the manner and upon the terms of the said last-mentioned agreement, or upon any other terms whatsoever (although requested so to do as aforesaid); but, on the contrary, he the said William hath hitherto wholly refused, and still doth refuse so to do, contrary to the tenor, effect, and meaning of the said last mentioned agreement, and the said last mentioned promise and undertaking of him the said James, to wit, at, &c. aforesaid. (A Count for money laid out, &c. and for money had and received, and on an account stated:) Yet the said James, not regarding his first and three last mentioned promises and undertakings so by him in manner and form aforesaid made, but contriving, &c. craftily and subtilly to deceive, &c. hath not as yet paid the said sum of twenty pounds so by him forfeited as aforesaid, and the said several sums of money in the three last mentioned promises and undertakings specified, or any or either of such sums of money, or any part thereof, to the said William, (although, &c. to the end of a common conclusion,) to the damage of the said William of fifty pounds, for which he brings his suit, &c. V. LAWES.

Declaration by
the Administrator
of intestate during
minority, on a
special agree-
ment, that

CORNWALL, to wit, John Williams complains against John Russel, being, &c. for that whereas the said John Williams, on the twenty-fifth day of April 1777, as administrator of all and singular the goods, chattels, and credits of John Hoskin deceased, plaintiff should convey to defendant a leasehold estate by a proper deed of assignment, and that plaintiff should pay defendant the purchase money on 2d May next, against defendant for not paying, &c.

at

at the time of his death, who died intestate during the minority of James Hoskin, son of the said John Hoskin, which said James H. then was and still is alive, and an infant under the age of twenty-one years, was lawfully possessed of a certain dwelling-house, smith's shop, garden, and meadow thereunto belonging, situate, lying, and being in the parish of St. Hilary in the said county of Cornwall, for the remainder of a term of ninety-nine years thereof granted, in case the said James Hoskin should so long live. And whereas, on the same day and year aforesaid, at the parish aforesaid, a certain discourse was moved and had by and between the said J. W. and J. R. of and concerning the premises aforesaid, and of and concerning the estate and interest of the said J. W. in the same, and of and concerning the said J. R.'s becoming a purchaser of the said estate and interest of the said J. Williams; and also of and concerning a sum of money to be paid by the said J. R. to the said J. W. as and for the purchase-money of the said premises; and upon that discourse it was then and there agreed between the said J. W. and J. R. that the said J. R. should and would purchase the aforesaid premises of and from the said J. W. at the price of l.; and that the said J. R. should have a good and sufficient deed of assignment of the premises aforesaid, to be drawn by J. T. of, &c. at the said J. R.'s expence of one pound sixteen shillings, and executed at C. on the third day of May then next, when the said purchase-money should be paid, and the said J. R. should and would pay the lord's rent, and all other the payments, covenants, and other the agreements in the original lease contained; and that the said J. R. should and would pay the lord's rent, rates, taxes, tithes, and all other outgoings whatsoever to that time: and the said agreement being so made, the said J. R. afterwards, to wit, on the same day and year last mentioned, at the parish of St. Hilary, in consideration thereof, and also in consideration that the said J. W. at the special instance and request of the said J. R. had then and there undertaken, and faithfully promised the said J. R. to perform the said agreement in all things on the part of the said J. W. to be performed, undertook, and then and there faithfully promised the said J. W. to perform the said agreement in all things on the part of him the said J. R. to be performed: Nevertheless the said J. R. not regarding, &c. did not on the third day of May then next following, the time of making the aforesaid agreement, nor at any other time hitherto, pay or cause to be paid to the said J. W. the said sum of thirty-six pounds five shillings, or any part thereof, as he ought to have done, according to the form and effect of the said agreement, and his said promise and undertaking in that behalf made as aforesaid (although the said J. W. afterwards, to wit, on the third day of May next ensuing, the time of making the aforesaid agreement, did duly execute to the said J. R. at C. aforesaid, a good and sufficient deed of assignment of the aforesaid premises, drawn by the said J. T. according to the true intent and meaning of the said agreement; whereof the said

J. R. afterwards, to wit, on the same day and year aforesaid, at, &c. had notice; and although the said J. R. was then and there and often afterwards, at, &c. requested by the said J. W. to pay him the said sum of money; but to pay the same to the said J. W. he the said J. R. hath hitherto altogether refused, and still doth refuse. And whereas also the said J. W. afterwards, to wit, on the said twenty-first day of April in the year aforesaid, as administrator of all and singular the goods, chattels, and credits of the said J. H. deceased, at the time of his death, who died intestate during the minority of the said James H. son of the said J. H. which said James H. then was and yet is alive, under the age of twenty-one years, was lawfully possessed of two fields or closes of land, situate, lying, and being in the said parish of St. Hilary in the county aforesaid, for the remainder of a term of ninety-nine years thereof granted, in case J. H. W. H. and James H. son of said J. H. deceased, should so long live: and whereas, on the same day and year last aforesaid, at the parish aforesaid, a certain discourse was moved and had by and between the said J. W. and J. R. of and concerning the premises aforesaid, and of and concerning the estate and interest of the said J. W. in the same, and of and concerning the said J. R. becoming a purchaser of the said last-mentioned estate and interest of the said J. W. and also of and concerning a sum of money to be paid by the said J. R. to the said J. W. as and for the purchase-money of the said premises last aforesaid; and upon that discourse it was then and there agreed between the said J. W. and J. R. that the said J. R. should and would purchase the said last mentioned premises of and from the said J. W. at the price of £ 1. and that the said J. R. should have a sufficient deed of assignment of the premises last aforesaid, to be drawn and prepared by the said J. T. attorney at law at Redruth aforesaid, at the said J. R.'s expence, of £ , and executed at C. aforesaid on said third day of May then next, when the said last-mentioned purchase-money should be paid; and that the said J. R. should and would pay the lord's rent, and perform the covenants, conditions, and agreements in the original lease contained; and that the said J. R. should and would pay the lord's rent, rates, taxes, tithes, and all other outgoings whatsoever, from Lady-day then last, and that he the said J. R. should be discharged from all outgoings whatsoever to that time: and the said agreement being made as aforesaid, the said J. R. afterwards, to wit, on the same day and year first above mentioned, at the said parish of St. Hilary, in consideration thereof, and also in consideration that the said J. W. at the special instance and request of the said J. R. had then and there undertaken and faithfully promised the said J. R. to perform the said last mentioned agreement in all things on the part of the said J. R. to be performed, undertook, and then and there faithfully promised the said J. W. to perform the said last mentioned agreement in all things on the part of him the said J. R. to be performed: Nevertheless the said J. R. not at all regarding his said last mentioned promise and undertaking

undertaking in form aforesaid made, but contriving, &c. did not, on the third day of May next ensuing the time of making the said last mentioned agreement, nor at any other time hitherto, pay or cause to be paid to the said J. W. the said last mentioned sum of

£. or any part thereof, as he ought to have done, according to the form and effect of the said last mentioned agreement, and his last mentioned promise and undertaking in that behalf made as aforesaid, although the said J. W. afterwards, to wit, on the third day of May next ensuing the time of making the said last mentioned agreement, did duly execute to the said J. W. at C. aforesaid, a sufficient deed of assignment of the said last mentioned premises, drawn by the said J. T. according to the true intent and meaning of the said last mentioned agreement; whereof the said J. R. afterwards, to wit, on the same day and year last aforesaid, at, &c. had notice; and although the said J. R. was then and there, and often afterwards, at, &c. requested by the said J. W. to pay him the said last mentioned sum of money, but to pay the same to the said J. W. he the said J. R. hath hitherto altogether refused, and still doth refuse. (3d Count, use and occupation of one dwelling-house, one shop, and one garden, and divers, to wit, twenty acres of land, twenty acres of meadow, and twenty acres of pasture, &c. 4th Count, *quantum meruit*; breach to the two last Counts.)

F. BOWER.

LANCASHIRE, to wit. John Wilson complains of Joseph Hoyle, being, &c. in a plea of trespass on the case, &c. for that whereas the said John heretofore, to wit, on the thirteenth day of February in the year of Our Lord 1784, at Liverpool in the said county of L. was lawfully possessed of a certain public inn with the appurtenances, situate, standing, and being at L. aforesaid, in the said county of Lancaster, commonly called and known by the name or sign of The Angel and Crown Inn, and wherein the said John then and there, for a long time before, had exercised and carried on the business of an innkeeper. And whereas the said John was also then and there lawfully possessed of certain goods, stock in trade, pictures, and fixtures in the said inn, as of his own proper goods, stock in trade, pictures, and fixtures: And thereupon afterwards, to wit, on the day and year aforesaid, at L. aforesaid in the county aforesaid, in consideration that the said John, at the special instance and request of the said James, would sell the said goods, stock in trade, pictures, and fixtures, at a fair appraisement, and would also quit the said inn, and suffer and permit the said James to enter into possession of the same, to carry on the said trade or business of an innkeeper therein, he the said James undertook, and to the said John then and there faithfully promised to pay to him for the said goods, stock in trade, pictures, and fixtures, according to such appraisement as aforesaid; and also the further sum of fifty pounds of lawful money of Great Britain, for the good-will and custom of the said inn: And the said

Declaration in B. R. in special assumpsit for breach of an agreement in not accepting possession of an inn, and paying for good-will thereof, and taking the fixtures and stock at a valuation.

said John in fact saith, that he, confiding in the said promise and undertaking of the said Joseph, afterwards, to wit, on the day and year aforesaid, at L. aforesaid in the county aforesaid, did sell the said goods, stock in trade, pictures, and fixtures hereinbefore mentioned, to the said Joseph at a fair appraisement, in which the said fixtures were then and there appraised at a certain large sum of money, to wit, for the sum of thirty-seven pounds nine shillings of lawful money of Great Britain; whereof the said Joseph then and there had notice; and did also then and there quit the said inn, and suffer and permit the said Joseph to enter into possession of the same; and the said Joseph did accordingly enter into the same, and hath from thence hitherto carried on the said trade or business of an innkeeper therein: Yet the said Joseph, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not as yet paid the said John for the aforesaid fixtures, according to such appraisement thereof as aforesaid, or in any other manner whatsoever; nor hath he as yet paid him the said sum of fifty pounds for the said good-will and custom of the aforesaid inn, according to his said promise and undertaking, (although so to do he the said Joseph was requested by the said John afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at Liverpool aforesaid in the county aforesaid,) but he so to do hath hitherto wholly refused, and still doth refuse, contrary to his aforesaid promise and undertaking, and in breach and violation thereof. *And whereas* the said John heretofore, to wit, on the day and year aforesaid, at L. aforesaid in the county aforesaid, was lawfully possessed of a certain other public inn with the appurtenances, situate, standing, and being at L. aforesaid, commonly called The Angel and Crown Inn, and wherein he the said John then and there, and for a long time before, exercised and carried on the business of an innkeeper; and thereupon afterwards, to wit, on the day and year aforesaid, at L. aforesaid in the county aforesaid, in consideration that the said John, at the like special instance and request of the said Joseph, would relinquish and give up the possession of the said last-mentioned inn, and the trade and business thereof, unto and in favour of him the said Joseph, he the said Joseph undertook, and to the said John then and there faithfully promised to pay him the further sum of fifty pounds of like lawful money of Great Britain: And the said John in fact further saith, that he, confiding in the said last-mentioned promise and undertaking of the said Joseph, afterwards, to wit, on the day and year aforesaid, at L. aforesaid in the county aforesaid, did relinquish and give up possession of the said last-mentioned inn, and the trade and business thereof, unto and in favour of him the said Joseph; and the said Joseph did accordingly enter into and take possession of the same, and from thence hitherto hath enjoyed the same, and the trade and business thereof; Yet the said Joseph, not regarding his said promise and undertaking so by him made as last aforesaid, but contriving and fraudulently

ad^e Count, for
the inn and
good-will there-
of, without
mentioning
stock.

lently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not (although often requested) paid to the said John the said sum of fifty pounds so by him agreed to be given for the possession and trade of the said last-mentioned inn as aforesaid, but altogether refused, and still doth refuse so to do, contrary to his said last mentioned promise and undertaking, and in breach and violation thereof.

V. LAWES.

MIDDLESEX, to wit. If John Torbeck and James Harrison make you secure, &c. then put, &c. Isaac Farrer, late of Bedford in the county of Lancaster, fustian manufacturer, that he be before our lord the king at Westminster, on wherefore, &c. to shew, for that whereas the said John Torbeck and James Harrison, before and at the time of entering into the agreement hereafter next mentioned, were and still are seised in their demesne as of fee of and in the several hereditaments and premises in the said agreement mentioned, and thereby agreed to be conveyed; and being so seised thereof, heretofore, to wit, on the fourth day of July in the year of Our Lord 1792, at Westminster in the county of Middlesex, it was agreed by and between the said John for himself, and the said James and the said Isaac, first, that the said John should and would, on or before the second day of February then next ensuing, by good and sufficient conveyances in the law, such as Counsel should advise, well and sufficiently grant and convey over unto the said Isaac, his heirs and assigns, all those three closes and parcels of land contained in lots No. 3 and 4, in an advertisement of an estate in Lowton in the said county, called Fair-house Estate or Fair-house Tenement, containing in the whole, by common estimation, eight acres of land, were the same more or less, late the inheritance of one Thomas Torbeck deceased, and then in the possession of one Henry Hill, as tenant or farmer thereof, free from all incumbrances, to hold to him the said Isaac Farrer, his heirs and assigns, for ever: And the said Isaac, for the consideration thereof, did thereby agree to accept of the same premises, and to pay, or cause to be paid, to the said John or his assigns, the sum of 52l. 10s. for each and every acre of the same closes and parcels of land, for and as a consideration for the same premises, at and upon the said second day of February then next, each acre to contain one hundred and sixty perches, after eight yards to the perch or pole; the said John Torbeck to be entitled to the whole of that present year's rent, the said Isaac having then paid one pound one shilling as earnest of the said bargain, and in part payment of the purchase-money: And, by a certain indorsement on the back of the said agreement, it was declared to be the meaning of that agreement between both parties, that the said Isaac Farrer was to pay in proportion for any part of an acre in the same manner as was therein mentioned for an acre. And the said agreement being so made as aforesaid, afterwards, to wit, on the fourth day of July in the year aforesaid, at Westminster

Præcipe for Declaration by original in assumpsit on an unsealed agreement made with one of two trustees in trust to sell freehold premises under a demise, to purchase the same at so much per acre. Action brought in the name of both, on the refusal of the defendant to accept the title when tendered to him. See Luxton and Robinson, Dougl. 598. Com. Dig. tit. Pleader, c. 34-54. Jones v. Barclay, Dougl. 659.

(1) amendments
ingrossed and
the draft of

(2) executed
and sealed, and
tendered and
offered to
(3) refused to
accept

Westminster aforesaid, in consideration that the said John for himself, and the said James, at the special instance and request of the said Isaac, had then and there undertaken and faithfully promised the said Isaac to perform and fulfil all things therein contained on the part and behalf of the vendor to be performed and fulfilled, he the said Isaac undertook, and then and there faithfully promised to perform and fulfil all things therein contained on his part and behalf to be performed and fulfilled, according to the true intent and meaning of the said agreement. And the said John and James in fact say, that although afterwards, and within the time in and by the said agreement for that purpose exprelled, to wit, on the said second day of February then next ensuing the date of the said agreement, to wit, at Westminster aforesaid, the said John and James did cause and procure to be prepared for execution, and for the approbation of Counsel and of the said Isaac, (1) *the draft of* good and sufficient conveyances in the law, well and sufficiently to grant and convey unto the said Isaac, his heirs and assigns, ~~the~~ said premises in the said agreement mentioned, and thereby agreed to be conveyed: And although the said John and James *were* then and there (2) *ready and willing, and offered and tendered to execute and* deliver such good and sufficient conveyances in law, and would then and there have *executed and* delivered the same to the said Isaac; but the said Isaac then and there absolutely (3) *discharged the said John and James from executing* the same or any other conveyances in the law whatsoever; and although the said several closes and parcels of land in the said agreement mentioned, and thereby agreed to be conveyed, then and there contained divers, to wit, acres, each and every of the said acres then and there containing one hundred and sixty perches, after eight yards to the perch or pole; of which the said Isaac then and there had notice; and although the said John and James have well and truly performed, and been ready and willing to perform, all other things in the said agreement contained on their part and behalf to be performed and fulfilled: Yet the said Isaac, not regarding his said agreement, nor his said promise and undertaking so by him made in that behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John and James in this behalf, did not nor would, when the said grant and conveyance was tendered to the said Isaac in manner aforesaid, or at any other time whatsoever, pay, nor hath he as yet paid, to the said John and James, or either of them, the said fifty-two pounds ten shillings for each and every of the said acres of the said closes and parcels of land, for and as a consideration for the same premises, except the said one pound one shilling so paid as earnest of the said bargain as aforesaid, or any part thereof, (although so to do the said Isaac was requested by the said John and James afterwards, to wit, on the said second day of February in the year of Our Lord 1793, and often afterwards, to wit, at Westminster aforesaid,) but he so to do hath hitherto wholly refused, and still doth refuse. (2d Count, considering the agreement as made with both

both plaintiffs: 3d Count, omitting what is in italic, and inserting what is in the margin: other Counts for money had and received, paid, lent, and advanced; account stated; and common conclusion.)

T. BARROW.

I Had duly considered the queries now put (as to not stating the agreement to be in writing, and the declaring upon it as made with one when the action is brought by two) before I settled this *Præcipe*. The agreement being on plain paper, need not be stated to be in writing; but it is sufficient to prove it so at the trial. Sir T.

Ray. 451. In the 1st Count the agreement is stated to have been made in terms with one according to the fact, but in effect with both plaintiffs according to its operation. In the 2d Count it is considered according to its legal meaning, as made with and to the use of both.

T. BARROW.

LONDON, to wit. Samuel Morris, late of, &c. was attached to answer unto James Farrell, &c. for that whereas heretofore, to wit, on, &c. the said Samuel was in the possession of a certain messuage or dwelling-house, commonly called or known by the name or sign of The Orange Tree, situate in a certain street called Orange-street, Red-Lion square, in the county of Middlesex, in which said messuage or dwelling-house he the said Samuel then exercised and carried on the trade and business of a victualler: And whereas the said Samuel was also then and there possessed of certain household goods, fixtures, stock in trade, &c. and other property of him the said Samuel, then being in the said messuage or dwelling-house, (1) *and then and there pretended himself to have or to be entitled to a certain lease of the said messuage or dwelling-house for a certain long term of years, and to have a right to sell and assign over such lease; and thereupon, whilst the said Samuel was so possessed as aforesaid, and whilst he so pretended himself to have and be entitled to such lease as aforesaid, and to have a right to sell and assign over the same, to wit, on, &c. at, &c.* it was agreed by and between the said Samuel and James in manner following, that is to say, the said Samuel did then and there agree to sell unto the said James the lease of his dwelling-house, known by the name of, &c. for the sum of one hundred and fifty-five pounds, *that is to say, the said lease, which the said Samuel so pretended himself to have and be entitled to as aforesaid,* and also to sell unto the said James all the said household goods and fixtures, his property, then in and upon the said premises, by appraisement of two brokers, or their umpire; and also his the said Samuel's stock of porter, ale, and amber, not exceeding twenty butts; spirituous liquors not exceeding ten pounds; and also that the said Samuel would pay up all rent and taxes unto the day of delivery of the possession thereof, which was then and there agreed to be on or before the twenty-eighth day of December then next ensuing, that is to say, the twenty-eighth day of December in the said year 1787; and that the said Samuel would mend the broken windows, and assign his beer licence on being paid for the time to come therein: and it was mutually agreed between the said

Declaration in C. B. of defendants for not delivering up to the plaintiff possession of an dwelling-house, which he had agreed to do, and also pretending that he had a lease of the house (when in fact he had not), which he would assign over to plaintiff, whereby he obtained of plaintiff a sum of money in part of a much greater sum which plaintiff was to give defendant on his obtaining possession of the premises.

(1) and the said Samuel being so possessed as last aforesaid, whilst he was so possessed, to wit, on, &c. at, &c.

said Samuel and James, that the party refusing to comply with and fulfil that agreement should forfeit to the other of them on demand the sum of fifty pounds, as damages for the non-performance thereof; and the said Samuel then and there acknowledged to have received of the said James the sum of five guineas as a deposit in part of the said agreement: and it was also then and there agreed, that the expences of the assignment of the lease, that is to say, the said lease so agreed to be sold to the said James as aforesaid, and the stamps of the inventory should be borne jointly between the parties: and the said agreement being so made, the said James then and there, to wit, on the twenty-sixth day of November in the year aforesaid, at London aforesaid, in the parish and ward aforesaid (Mutual promises). And the said James in fact saith, that although the said household goods, fixtures, and property by the said agreement agreed to be taken by appraisement as aforesaid, were, after the making of the said agreement, appraised according to the tenor and effect of the said agreement in that behalf; and although he the said James, on the said twenty-eighth day of December A.D. 1787, in the said agreement mentioned, at, &c. was ready and willing to purchase and pay for the same, together with the said lease of the said premises, *which he the said Samuel so agreed to sell to the said James as aforesaid*; and also such stock of porter, ale, and amber, and spirituous liquors, of him the said Samuel, as by the said agreement was to be so bought by him the said James as aforesaid, and also to enter into and accept and take possession of the premises in the said agreement mentioned, according to the tenor and effect of the said agreement, and of his aforesaid promise and undertaking; and although he the said James did do and perform, and was ready and willing to do and perform every thing in the said agreement contained on his part and behalf to be done and performed, according to the tenor thereof, and of his aforesaid promise in that behalf; and although he the said James then and there, to wit, on the said twenty-eighth day of, &c. at, &c. requested x the said Samuel (2) *to sell and assign over to him the said James the said lease of the aforesaid premises which the said Samuel so agreed to sell to the said James as aforesaid*, according to the tenor and effect of his said agreement, and of his promise and undertaking in that behalf made as aforesaid: Yet the said Samuel, not regarding the said agreement, nor his said promise and undertaking in this behalf, did not nor would, on the said twenty-eighth day, &c. or at any other time whatsoever, (3) *sell or assign over to the said James the said lease which he the said Samuel so agreed to sell to the said James as aforesaid, or any other lease whatsoever of the said premises, but then and there, and always afterwards, refused to sell or assign over any such lease unto him the said James*, contrary to the tenor and effect of the said agreement, and in breach and violation thereof: whereby, and by reason of which said premises, he the said Samuel forfeited and became liable to pay to the said James the said sum of fifty pounds, by the said agreement agreed to be

or to suffer or permit him to take the same, and hindered and prevented him from so doing.

(2) to deliver up the possession of the premises last aforesaid to him the said James.

(3) deliver up unto the said James the possession of the said premises in the said last-mentioned agreement mentioned, or of any part thereof, but then and there always refused so to do,

paid

paid and forfeited by the party respectively refusing to comply with and fulfil such agreement; whereof the said Samuel afterwards, to wit, on, &c. at, &c. had notice; and the said sum of fifty pounds so by him forfeited as aforesaid, was then and there demanded of him the said James, and payment thereof required according to the tenor and effect of the said agreement. And whereas heretofore, to wit, on, &c. at, &c. he the said Samuel was in the possession, that is to say, as lessee thereof, of a certain other messuage or dwelling-house, known, &c. (Finish this Count same as the first, only omitting what is in italic, and inserting in lieu thereof what is in the margin.) And whereas, &c. &c. (Go on with this Count same as the first, until you come to this mark X, then proceed as follows :) requested the said Samuel to perform the said last-mentioned agreement on his part and behalf: Yet the said Samuel, not regarding the said last-mentioned agreement, nor his said last-mentioned promise and undertaking in this behalf, did not nor would then and there, or at any other time whatsoever, sell or cause to be sold unto the said James the said lease so agreed to be sold by him as aforesaid of the said dwelling-house in the said last-mentioned agreement mentioned, nor the said household goods, fixtures, stock of porter, ale and amber, and spirituous liquors, in the said last-mentioned agreement specified, or any or either of them, or any part thereof, at the rate and upon the terms in the said last-mentioned agreement specified, or at or upon any other rate or terms whatsoever; nor did nor would he the said Samuel then and there, or at any other time whatsoever, deliver to, or suffer or permit him the said James to take possession of the said last-mentioned messuages and premises, but he the said Samuel then and there, always from thence hitherto, hath refused, and still refuses so to do, contrary to the tenor and effect of the said last-mentioned agreement, and in breach and violation thereof: whereby, and by reason of which said last-mentioned premises, he the said James lost and was deprived of all profit, benefit, and advantage that might and would otherwise have arisen and accrued to him from a performance of the said last-mentioned agreement on the part of the said Samuel, and was also put to great and fruitless trouble and expence, to wit, to the expence of fifty pounds in and about the appraisement of the said goods and other property so agreed to be bought and taken by appraisement as aforesaid, and in and about the removal of certain goods and furniture of him the said James, under the idea of his entering into and having possession of the said premises in the said last-mentioned agreement specified; and was and hath been wholly hindered and prevented from carrying on the said business of a victualler, which he otherwise intended to do, and would have done, if the said Samuel had performed and abided by his said last-mentioned agreement, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas heretofore, to wit, on, &c. at, &c. in consideration that the said James, at the like special instance and request of the said Samuel, had then and there agreed with the said Samuel to purchase

chafe and take of and from him the said Samuel a certain lease which he the said Samuel then and there pretended himself to have and be entitled to, of a certain messuage or dwelling-house with the appurtenances there, in the possession of him the said Samuel, commonly called and known by the name or sign of The Orange Tree, situate in a certain street called Orange-street, Red-Lion-square, in the said county of Middlesex, for a certain large sum of money, to wit, for the sum of one hundred and fifty-five pounds, and in which said last-mentioned messuage or dwelling-house he the said Samuel then and there exercised and carried on the trade and business of a victualler, he the said Samuel undertook, and then and there faithfully promised the said James, that he the said Samuel then and there had and was entitled to the said lease, which he the said Samuel so alleged himself to have and be entitled to of the said last-mentioned messuage or dwelling-house as aforesaid, and that he the said Samuel could and might, and then and there had a right to sell and assign over such lease to him the said James, and that he could accordingly sell and assign over the same unto him the said James for the said sum of one hundred and fifty-five pounds. And the said James in fact saith, that although he the said James was always ready and willing, and hath often offered to purchase and take of and from the said Samuel such lease as he so alleged himself to have and be entitled to as last aforesaid, at and for such sum of one hundred and fifty-five pounds so agreed to be taken for the same as aforesaid; and although he would have accordingly bought and purchased such lease of the said Samuel, if he the said Samuel had been in possession of and could have assigned over the same: Yet the said James in fact further saith, that the said Samuel, contriving and fraudulently intending to deceive and injure the said James in this behalf, did not regard his said last-mentioned promise and undertaking, but did thereby deceive the said James in this, that he the said Samuel, at the time of the making of his said last-mentioned promise and undertaking, had not, nor was he entitled to the said lease of the said last-mentioned messuage or dwelling-house, in which he the said Samuel so alleged himself to have and be entitled to as aforesaid, nor could, nor might, nor had he then and there, a right to assign over and sell such lease to the said James, nor hath he as yet sold or assigned the same, or any other lease of the said last-mentioned messuage or dwelling-house, to the said James; whereby the said James lost and was deprived of all profit, benefit, and advantage that would otherwise have arisen and accrued to him from the purchase of such lease of the said last-mentioned messuage or dwelling-house, and was hindered and prevented from taking possession of the same, and put to great trouble, inconvenience, and expence in preparations for taking such possession, and in the removal of his goods and fixtures for that purpose, to wit, at, &c. (Add the common money Counts, and account stated; common conclusion.)

LONDON,

LONDON, *ss.* William Sabine and Edward Tandham complain of John Bucher, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass upon the case, &c. for that whereas the said plaintiffs having heretofore, to wit, on the ninth day of September A.D. 1784, at L. in the parish of St. Mary le Bow, and ward of Cheap, taken a lease, to commence at Christmas then and now next ensuing, of certain messuages, premises, and gardens situate in the parish of St. Leonard, Shore-ditch, in the county of Middlesex, then in the tenure and occupation of the said defendant as tenant thereof, and in which he the said defendant then and there exercised and carried on the trade and business of a victualler; and the said plaintiffs being desirous of being put into immediate possession of the said premises, and also of having possession of the shrubs, plants, and trees in the said gardens, it was then and there, that is to say, on the said ninth day of September in the year 1784 aforesaid, at, &c. aforesaid, agreed by and between the said defendant and the said plaintiffs in manner following, that is to say, the said defendant for and in consideration of five pounds five shillings to him the said defendant in hand paid by the said plaintiffs, and also for and in consideration of the agreement hereafter next mentioned, for payment of the further sum of fifteen pounds fifteen shillings promised and agreed to and with the said plaintiffs, to deliver up the said houses, gardens, and premises to the said plaintiffs on or before Michaelmas then next and now last past, together with all the palings and fences of and belonging to the different gardens, and all erections in, upon, or about the same; and also all the shrubs, plants, trees, flowers, and roots in and about the gardens, and all the fruit upon the same (except only to the said defendant the use of the said dwelling-house on the north side, of and in the occupation of the said defendant, till Christmas then and now next, with liberty nevertheless for the said plaintiffs to enter and come thereupon at all reasonable times, to make and do such repairs and alterations therein, in the mean time, as to them should seem expedient, and excepting also to the said defendant the garden-pots with their contents, and the flower-roots in the middle of the garden, called by distinction the said John Bucher's Garden): And further the said defendant did then and there agree with the said plaintiffs, on or before the said Michaelmas-day then next, to assign over the beer licence belonging to the said house to the said plaintiffs; and the said plaintiffs did then and there agree to pay to the said defendant the remaining sum of fifteen pounds fifteen shillings on the said Michaelmas-day then next, on his delivering up the possession of the premises above mentioned, and also to take the fixtures and public-house, furniture and utensils in the said dwelling-house, at a fair appraisement by two appraisers, one to be named by each of the said parties; and it was then and there also agreed by and between the said defendant and the said plaintiff, that in case of any dispute they should be at liberty to name a third, who

Declaration in
assumpsit, both
for a stated pen-
alty and da-
mages, on a very
special agree-
ment to let pre-
mises, and to sell
stock, &c. at a
valuation.

Agreement;

should be empowered to decide the same; and for the more due performance of the said agreement by each of the said parties, they did then and there respectively agree to forfeit and pay to the other the sum of one hundred pounds in case of breach or non-performance thereof: and the said agreement being so made, the said defendant, upon the making thereof, to wit, on the ninth day of September in the year 1784 aforesaid, at, &c. aforesaid, in consideration, &c. (Mutual promises). And the said plaintiffs further say, that although they the said plaintiffs, after the making the said agreement, to wit, on the said Michaelmas-day then next ensuing and now last past, to wit, at, &c. aforesaid, paid to the said defendant the remaining sum of fifteen pounds fifteen shillings in the said agreement mentioned, and did also then and there take and purchase of and from the said defendant the said fixtures, public-house, furniture, and utensils in the said agreement mentioned, at a fair appraisement, according to the tenor and effect, intent and meaning of the said agreement; and although they the said plaintiffs have performed and fulfilled the said agreement in all things therein contained on their part and behalf to be performed and fulfilled, according to the tenor and effect, intent and meaning of the said agreement, and the aforesaid promise and agreement of them the said plaintiffs, to wit, at, &c. aforesaid: Yet they the

(In 2d Count,)
(1) "not regarding his said last-mentioned agreement, nor his promise and undertaking in that behalf made as aforesaid, but contriving, &c."

Breach, pulled down summer-house and converted materials.

Gathered fruit, and carried away same with flower-pots,

said plaintiffs aver, that the said defendant (1) did not on or before Michaelmas-day next after the making of the said agreement, deliver up unto them the said plaintiffs all the erections in, upon, and about the premises in the said agreement mentioned, at the time of making the said agreement, and also all the shrubs, plants, trees, flowers, and roots in and about the said gardens, and all the fruit on the same, except as in the said agreement is excepted, according to the tenor and effect of the said agreement, but therein failed and made default; and on the contrary thereof he the said defendant, after the making of the said agreement, and before Michaelmas-day then next, to wit, on the eighteenth day of September in the year 1784 aforesaid, wrongfully took down, pulled down, prostrated, demolished, and destroyed a certain erection or building, called a summer-house, and divers other erections then and at the time of the making the said agreement erected, standing, and being in, upon, and about the said gardens in the said agreement mentioned, and part and parcel of the said premises so agreed to be delivered up unto the said plaintiffs as aforesaid, and took and carried away the same, and the materials thereof, from and off the same premises, and converted and disposed thereof to his own use; and also then and there wrongfully plucked, pulled, and gathered divers large quantities of the fruit in the said agreement mentioned, and thereby so agreed to be left and delivered up unto the said plaintiffs as aforesaid, and took and carried away the same, together with divers wooden stands for garden-pots then and at the time of making the said agreement standing and being upon and about the said gardens in the said agreement mentioned, and part and parcel

del of the things so agreed to be delivered up to the said plaintiffs
 as aforesaid, and converted and disposed thereof to his own use ;
 and also then and there wrongfully plucked up, pulled up, dug up,
 and rooted up divers gooseberry and currant trees or bushes, and
 flower-roots, and a large quantity of box, then, and at the time of
 the making the said agreement, growing and being in the afore-
 said gardens, and part and parcel of the said premises and things so
 agreed to be delivered up as aforesaid, and spoiled and destroyed a
 great part thereof, and carried away and removed the residue :
 And afterwards, to wit, at Michaelmas-day next after the making
 of the said agreement, and now last past, when he the said de-
 fendant left and quitted the aforesaid gardens in the said agree-
 ment mentioned, he the said defendant left and delivered up the
 same to the said plaintiffs, without rebuilding the said erections so
 by him pulled down and removed as aforesaid, or any or either
 of them, and without in any manner whatsoever reinstating the
 same, or restoring or replacing the same, or any other of the
 things so by him removed and taken away as aforesaid, contrary to
 the tenor and effect, intent and meaning of the said agreement,
 " and promise and undertaking of the said defendant," and in
 breach and violation thereof *on the part of him the said defendant,*
to wit, at, &c. aforesaid ; whereby, and according to the tenor and
effect of the said agreement, he the said defendant forfeited, and
became liable to pay to the said plaintiffs the said sum of one hundred
pounds in the said agreement mentioned, and thereby agreed to be
forfeited by the party breaking or not performing the said agreement,
to wit, at, &c. aforesaid ; whereof the said defendant afterwards,
and before the exhibiting the bill of the said plaintiffs, to wit, on the
first day of October A. D. 1784 aforesaid, there had notice. And
 whereas, (same as first, inserting what is in margin and in the
 body of the Precedent between inverted commas, and omitting
 what is in italic, adding " other" and " last mentioned" in the
 second Count where necessary, then the following conclusion :)
 Whereby the said plaintiffs have not only been deprived of the use,
 profit, benefit, and advantage of the said premises and things so
 removed, pulled down, and destroyed by the said defendant as last
 aforesaid, but have also been put to a great expence in making
 good the damage and injury occasioned thereby to the said gar-
 dens and premises so by them agreed for as last aforesaid, to wit,
 at, &c. aforesaid. (3d Count, money laid out, expended, and
 paid, twenty-first day of October 1784 ; had and received ; ac-
 count stated ; and common conclusion to the first and three last-
 mentioned promises and undertakings, averring that defendant has
 not yet paid the said sum of one hundred pounds so by him for-
 feited as aforesaid, nor the said several sums of money in the said
 three last-mentioned promises and undertakings specified.)

Left premises
 without re-
 building or re-
 placing, &c.

2d Count,

V. LAWES.

Postea for the plaintiff on the whole Declaration generally.

Afterwards, that is to say, at the day and at the place within mentioned, before the right honourable William Earl of Mansfield, the chief justice within written, (John Way gentleman being associated unto the said chief justice by force of the statute in such case made and provided,) come, as well the within W. S. and E. S. by their attorney within named, as the within-named John B. by his attorney within named; and the jurors of the jury whereof mention is within made, being summoned, also come, who, to try the truth of the within contents, being chosen, tried, and sworn, say upon their oath, that the within J. B. did undertake and promise in manner and form as the within W. S. and E. S. have within complained against him; and they assess the damages of the said W. S. and E. S. by occasion of his non-performing of the within-mentioned promises and undertakings, over and above their costs and charges by them about their suit in that behalf expended, to thirty pounds, and for the said costs and charges, to forty shillings. Therefore, &c.

This cause was tried, and a verdict for the plaintiffs with thirty pounds damages, Term 1785; previous to which trial, defendant gave notice to produce the writ upon it; from whence we inferred it would be objected, that the action was prematurely brought, inasmuch as the writ was sued out on the day of , when possession was not due under the agreement till Michaelmas-day on the twenty-ninth of September following. The answer is twofold: 1st, There was a complete cause of action at the time of suing out the writ; 2d, Whether so or not, an undoubted right to sue, as well as cause of action, is in plaintiff previous to his declaration or bill upon record.

The following are authorities to the first point: Sid. 48. Raym. 25. Keb. 703. 118. S. C. 5 Co. 20, 21. 2. And. 12. Moor, 452. Cro. Eliz. 450. Poph. 209. S. C. adjudged. Bulstr. 22. Raym. 464. 2. Jones, 197. S. C. adjudged. Skin. 39. pl. 3. 40. per Cur. T. Raym. 464. when said as a reason, "that the law regards the strict and faithful performance of all contracts, and doth discountenance all such as are in fraudem legis." The defendant pulled down, before issuing the writ, and ga-

thered the fruit, therefore he broke his contract; but he also removed, especially the fruit, and thereby was disabled to give possession according to the agreement. As to the second point, where one sues by bill, a *latitat* may be sued out before the cause of action accrued; but the party must not be arrested till after *alter* on an original, which, if tested before, is abateable: the latter is the commencement of the suit; but a *latitat* is only process to bring the party before the Court, that plaintiff may declare against him by bill, (which in B. R. where you proceed by bill, is the commencement,) and then the proceedings on the *latitat* cease. Hanway and Merry, 1. Vent. 28. Foster and Bonner, Cowp. 454: but by Lord Mansfield, in the last cited case, "In cases under the statute of Limitations, and the statutes relative to the time when penal actions are to be brought, the *latitat* has been considered in nature of an original writ in C. B.; but under the general practice of the Court, and the statutes to prevent vexatious arrests, it is a mere process or summons, and its time of issuing immaterial."

Declaration against defendant for not making an application to mortgage of certain premises,

SURRY, to wit. J. W. and T. W. For that whereas, long before the making of the several promises and undertakings hereinafter mentioned, to wit, on, &c. at, &c. in, &c. the said plaintiff, for and in consideration of the sum of twenty thousand pounds, to permit plaintiff to remain in possession, according to defendant's promise.

pounds

pounds paid to him the said plaintiff by one J. D. by certain indentures of lease and release, had duly conveyed divers messuages, lands, tenements, and hereditaments and premises, with the appurtenances, situate, lying, and being in the several parishes of, &c. unto and to the use of the said J. D. and his heirs, by way of mortgage, and subject to a proviso in the said release contained for redemption of the said premises, on payment to the said J. D. of the said sum of twenty thousand pounds, with lawful interest for the same, at a time long since past. *And whereas the said sum of twenty thousand pounds, the consideration money above mentioned to be paid by the said J. D. to the said plaintiff was the proper money of Sir John Wynne, bart. since deceased, for whom the said J. D. was a trustee only, to wit, at, &c.* And whereas the said sum of twenty thousand pounds, and the interest thereof, were not paid according to the form and effect of the said proviso, whereby the estate of the said J. D. of and in the said mortgaged premises, long before the commencement of the action of ejectment hereinafter next mentioned, had become absolute in law, to wit, at, &c. And whereas the said plaintiff continually from the time of the making of the said mortgage, until and at the time of the grievance hereinafter next mentioned, was in the actual possession, use, occupation, and enjoyment of a certain messuage or dwelling-house, called, &c. and divers, to wit, five hundred acres of land with the appurtenances, usually called the Demefne of G. parcel of the aforesaid messuages, tenements, lands, and hereditaments so conveyed by way of mortgage as aforesaid, and resided in and upon the same messuage or dwelling-house; and long before, and at the time of the grievance hereinafter next mentioned was possessed of divers large quantities of household furniture, cattle, goods, and chattels in and upon the said messuage or dwelling-house and land, with the appurtenances, so in the occupation and possession of the said plaintiff as aforesaid, of great value, to wit, of the value of twenty thousand pounds of lawful money of Great Britain, to wit, at, &c. And whereas also, a little before the committing of the grievance hereinafter next mentioned, to wit, in the Term of the Holy Trinity, in the seventeenth year of the reign of our said lord the now king, a certain action of trespass and ejectment was commenced and prosecuted in his Majesty's Court of Exchequer at Westminster, against the said plaintiff and his tenants, for the recovery of the possession of the aforesaid messuages, lands, tenements, and hereditaments with the appurtenances so conveyed to the said J. D. as aforesaid, and whereof the said messuage or dwelling-house and land, with the appurtenances so in the occupation and possession of the said plaintiff, were part and parcel, which said ejectment was commenced and prosecuted upon the demise of the said J. D. the said mortgage then remaining unsatisfied, and such proceedings were thereupon had in the said Court of Exchequer in the said action or suit, that afterwards, to wit, in the Term of Easter in the eighteenth year, &c. a judgment of the said Court

was obtained for the nominal plaintiff in the said action to recover the possession of the premises for which the said action of trespass and ejectment was brought as aforesaid. And whereas also, after the commencement of the said action, and before the execution of that judgment, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there retained and employed the said defendant, amongst other things, to apply to the person or persons then interested in the said mortgage, and on whose behalf the said action was commenced as aforesaid, or to his, her, or their agent or agents in that behalf, for permission to the said plaintiff to remain and continue in possession of the said messuage or dwelling-house and lands called the Demesne of G. so in the possession of the said plaintiff as aforesaid, and for the consent of the person or persons interested in that behalf, that the said plaintiff might not be dispossessed of the said premises by any writ of possession to be sued out upon the judgment in the said action, and also to give notice to the said plaintiff as soon as conveniently might be, whether permission and consent could be obtained by him for the said plaintiff or not, for a certain reasonable reward, hire, or recompense to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, &c. that he would, as soon as conveniently might be, apply to the person or persons interested in the said mortgage, or on whose behalf the said action was commenced as aforesaid, or to his, her, or their agent or agents in that behalf for permission to the said plaintiff to remain and continue in possession of the said messuage and dwelling-house and land with the appurtenances called the Demesne of G. and so in the possession of the said plaintiff as aforesaid, and for the consent of the person or persons interested in that behalf, and that the said plaintiff might not be dispossessed of the said premises by any writ of possession that might be sued out upon the said judgment in the said action, and also that he would truly and faithfully give notice to the said plaintiff as soon as conveniently might be, whether such permission and consent could be obtained by him for the said plaintiff or not; and although, after the making of the said promise and undertaking of the said defendant, and before the execution of the writ of possession hereinafter next mentioned, more than a convenient and reasonable time for the said defendant making such application, and giving such notice to the said plaintiff as aforesaid had elapsed: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving, and wrongfully, maliciously, and injuriously intending to injure, prejudice, and aggrieve the said plaintiff in this behalf, did not make any application to the person or persons interested in the said mortgage, or on whose behalf the said action was commenced as aforesaid, or to his, her, or their agent or agents in that behalf, for permission for the said plaintiff to remain and continue in possession of the said messuage or dwelling-house and land called the Demesne of G. in his
the

the said plaintiff's possession as aforesaid, or for the consent of the person or persons interested in that behalf, that the said plaintiff might not be dispossessed of the said premises by any writ of possession to be sued out upon the judgment in the said action, neither did the said defendant give any true and faithful notice to the said plaintiff, whether the said permission or consent could be obtained by him for the said plaintiff or not, but on the contrary thereof he the said defendant wholly neglected and omitted to make any such application as aforesaid; and afterwards, to wit, on, &c. and on divers other days and times between that day and the committing of the grievance hereinafter next mentioned, wrongfully, deceitfully, falsely, and knowingly informed the said plaintiff, that one A. B. who was the attorney or agent of the person or persons interested in the said mortgage, *and on whose behalf the said action was commenced*, and who was employed by him, her, or them, in the prosecution of the said action, had promised the said defendant that the said plaintiff should remain unmolested at G. aforesaid: by reason and means of which said premises, he the said plaintiff giving credit to the aforesaid information of the said defendant, and believing the same to be true, and believing and conceiving that he the said plaintiff should not be disturbed in the possession of the aforesaid messuage or dwelling-house and land called the Demesne of G. aforesaid, and having no notice to the contrary, continued and remained in possession of the said last-mentioned premises from thenceforth until and at the time of his expulsion therefrom hereinafter mentioned, and during all that time kept and continued the said household furniture, cattle, goods, and chattels in and upon the said messuage or dwelling-house and land so in the possession of the said plaintiff as aforesaid. And the said plaintiff afterwards, to wit, on, &c. was ejected and expelled from and out of the possession and occupation of the aforesaid messuage or dwelling-house and land with the appurtenances, under and by virtue of a certain writ of our said lord the king of *bab. fac. poss.* before that time duly issued out of the said Court of Exchequer upon the aforesaid judgment, and the said furniture, cattle, goods and chattels so being in and upon the aforesaid premises as aforesaid, in execution of the said writ, and in order to give and deliver possession of the said premises according to the effect of the said judgment, were removed, turned, and driven off from the said messuage and land so in the possession of the said plaintiff as aforesaid, and divers of the said cattle of great value, to wit, of the value of two hundred pounds, wandered and escaped to places unknown to the said plaintiff, and were totally lost to the said plaintiff; and the said plaintiff, for want of due notice of the said execution, could not securely or safely keep or provide for the residue of the said cattle, and the said household furniture, goods, and chattels, or sell or dispose of the same according to the real value, or so well as he otherwise would and might have done; but by reason of the premises the said last-mentioned cattle and the said household furniture, goods, and chat-

3d Count.

tels were greatly damaged and diminished in value; and the said plaintiff was obliged to sell and dispose of the same at very small prices, and for much less money than he otherwise could and might have done and procured for the same, to wit, at, &c. And whereas, &c. [2d Count same as first, only omitting what is in italic, and not taking notice of any persons being interested in the mortgage except J. D. and stating the defendant's promise to be to make the application to J. D. for his consent to the plaintiff's remaining at G.]

A. CHAMBERE,

Sec "Assumpsit to render Services, perform Works," and Nonfeasance.

The defendant had an action of ejectment brought against him, the defendant promised to give the plaintiff possession of the premises in dispute, and also to repair the fences and pay plaintiff his costs; the defendant delivered up the premises, but refused to fulfil the remainder of his agreement.

YORKSHIRE, ff. G. R. v. J. Y. being, &c. For that whereas the said G. before and at the time of the making of the promise and undertaking of the said J. hereafter next mentioned, had brought a certain ejectment against the said J. in the court of our lord the king, before the king himself here, for the recovery of the possession of a certain messuage, and of certain lands and premises with their appurtenances, situate at, &c. of him the said G. and in the possession and occupation of the said J.; and thereupon, whilst the said ejectment was depending, to wit, on, &c. at, &c. at the special instance and request of the said J. in consideration that the said G. would proceed no farther in the said ejectment, and would pay to the said James the sum of twelve pounds, as a compensation for the corn which he the said J. had sown upon the said premises, he the said James undertook, and then and there faithfully promised the said G. that he the said J. would immediately put the said G. into possession of the said premises; and would also put the windows, &c. &c. in and upon the said premises (which were then out of repair) into good and sufficient tenantable repair; and would also pay to the said G. all such costs as he the said G. had been put unto or might pay to his attorney for commencing and prosecuting the said ejectment; And the said G. in fact says, that he, confiding in the said promise and undertaking of the said James, so by him made as aforesaid, did not further proceed, nor hath he further proceeded in the said ejectment so by him brought as aforesaid, but hath forbore so to do. And the said G. further says, that the costs of him the said G. in and for commencing and prosecuting the said ejectment, amounted to a large sum of money, to wit, the sum of two pounds of lawful, &c. whereof the said J. afterwards, to wit, on, &c. had notice. And although he the said G. hath, since the making of the aforesaid promise and undertaking, hitherto been ready and willing, and then and there tendered and offered to pay unto the said J. the said sum of twelve pounds, for and in compensation of the corn he had so sown, and would then and there have paid him the same had he not then and there refused to accept thereof; and although the said James hath long since put the said G. into possession of the said premises for which the said ejectment was so brought as aforesaid: Yet the said James, not regarding, &c. but contriving, &c. in this behalf, he the said James did not, nor hath he put the win-

dows,

dows, &c. in and upon the said demised premises, or any or either of them, or any part thereof, into good and sufficient tenantable repair (although a reasonable time for that purpose hath long since elapsed, and although he could and might have so done); nor hath he as yet paid to the said G. his said costs for commencing and prosecuting the aforesaid ejectment, although to perform his said promise and undertaking the said James hath been frequently required by the said G. to wit, at, &c.; but he the said James so to do hath hitherto wholly refused and neglected; and the said costs are still wholly unpaid to him the said G.; and by reason of the said J. not repairing the said windows, &c. according to his aforesaid promise in that behalf, he the said G. hath been forced and obliged to repair and amend the same at his own expence, and on that occasion to lay out and expend a large sum of money, to wit, the sum of fifty pounds of lawful money of Great Britain, to wit, at, &c. (2d Count, confining both consideration and assumpsit to the suit in ejectment; money laid out, &c. &c. &c.; account stated, &c. &c.)

V. LAWES.

See *Landlord v. Tenant, ante*; and *Assumpsit in Consideration of Forbearance, post*.

YORKSHIRE, to wit. T.C. v. J. F. For that whereas on, &c. at, &c. in, &c. in consideration that the said Thomas, at the special instance and request of the said J. had, at the special instance and request of the said J. sold to the said J. and the said J. had purchased of the said T. a certain freehold estate, consisting of a messuage, &c. with the appurtenances, situate, lying, and being in the parish of, &c. in the said county of York, he the said J. undertook and then and there faithfully promised the said plaintiff to pay him the sum of ninety-four pounds on the first day of June then next, if then the title to the said estate should be made perfect and satisfactory to the said J. And he the said T. in fact says, that afterwards, and after the making of the said promise and undertaking of the said J. and before the first of June then next, to wit, on, &c. the title to the said estate was made perfect and satisfactory to the said J. to wit, at, &c. of all which said premises he the said J. afterwards, to wit, on, &c. at, &c. had notice, and was requested to pay to the said T. the said sum of ninety-four pounds. And whereas also, afterwards, to wit, on, &c. at, &c. in consideration that he the said T. at the like special instance and request of the said J. had sold to the said J. and the said J. had purchased of the said T. a certain other freehold estate, consisting of a messuage, &c. with the appurtenances, situate, lying, and being in, &c. he the said J. undertook and then and there faithfully promised the said T. to pay him the said sum of ninety-four pounds, when and so soon as the title to the said estate should be made perfect and satisfactory to the said J. whereof the said J. then and there had notice, and was requested to pay the said last mentioned sum of ninety-four pounds to the said Thomas. And whereas also the said J. afterwards, to wit, on, &c. at, &c. was indebted to the said T. in the sum of ninety-four pounds of like lawful money for so much money due

Declaration against defendant, who in consideration that plaintiff had sold to him an estate, promised to pay the purchase money on 1st of June next, if the title was then satisfactory against defendant for not paying, &c.

2d Count.

due and payable from the said J. to the said T. for a certain other estate of the said T. consisting of a messuage, &c. with the appurtenances, in the parish of, &c. before then sold and duly conveyed by the said Thomas and his wife to the said J. at his request in consideration of the said last mentioned sum of ninety-four pounds, to be therefore paid to the said T. by the said J.; and being so indebted, &c. (Add the money Counts; an account stated; and common breach.)

G. WOOD,

It was agreed between plaintiff and defendant, that defendant should let the house in his possession to plaintiff, and that goods, &c. should be taken at a fair appraisement, and that if either should refuse to comply with that agreement, he that refused should pay 9l. 9s. Defendant refused to let plaintiff enter into the house, and also to pay the 9l. 9s.

MIDDLESEX, ss. John Collier complains of Richard Wilks, being, &c. for that whereas on, &c. at, &c. it was agreed by and between said plaintiff and said defendant, that said defendant should let to said plaintiff *all his right and interest* of and in certain premises, known by the sign of The Glovers' Arms, situate, lying, and being in Old Street, in the parish of, &c. and then in the possession of him said defendant; and that said plaintiff should give fifteen pounds for the good will of the trade of the said premises, and likewise take the goods and fixtures in, of, and belonging to the said premises, at a fair appraisement by two appraisers or their umpire, and the stock in trade, such as brandies, &c. not exceeding the value of five pounds, at a fair valuation; and that said defendant should pay up all rent and taxes to the time the said plaintiff should take possession of the said premises, which it was mutually agreed between said plaintiff and said defendant, should be on or before the twenty-sixth day of June then instant, to wit, in the year 1781 aforesaid. And it was also then and there further agreed by and between the said plaintiff and said defendant, that if either of them should refuse to comply with every article of the said agreement, then the said party so refusing should and would pay to the other or his order the sum of nine guineas, that is to say, the sum of nine pounds nine shillings of lawful money, &c. And the said agreement being so made, he the said plaintiff then and there, to wit, on, &c. at the special instance and request of said defendant, undertook and faithfully promised the said defendant to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled; and as a security, as well for the performance of the said agreement on his part, as to induce, and enforce, and secure a performance thereof on the part of the said defendant, he the said plaintiff then and there deposited in the hands of one T. R. five pounds five shillings, for the use of said defendant, in case he the said plaintiff neglected or refused to perform the aforesaid agreement on his part; whereupon said defendant then and there, to wit, on, &c. in consideration of the premises, undertook and faithfully promised said plaintiff to perform and fulfil the said agreement in all things therein contained on his part and behalf to be performed and fulfilled. And the said plaintiff in fact saith, that although he the said plaintiff hath always been ready and willing to do and perform every thing in the aforesaid agreement contained

contained on his part and behalf, according to the tenor and effect, true intent and meaning of the said agreement, and of his promise and undertaking in that behalf made as aforesaid, and on, &c. at, &c. was ready and willing, and offered to accept and take all the right, title, and interest of said defendant of in and to said premises in the said agreement mentioned, with the appurtenances, and to enter into and take possession of the same upon the terms in the aforesaid agreement specified, and then and there required the said defendant to let the same unto him the said plaintiff, upon the terms and according to the tenor and effect, true intent and meaning of the said agreement: Yet the said plaintiff in fact saith, that the said defendant did not on, &c. nor has he at any other time whatsoever *LET his right, title, and interest of, in, and to* the said premises in the said agreement mentioned, to him the said plaintiff, upon the terms and according to the tenor and effect, true intent and meaning of the aforesaid agreement, or on any other terms whatsoever; but on the contrary, the said defendant wholly refused so to do, and therein wholly failed and made default, contrary to the tenor and effect, true intent and meaning of said agreement: by reason whereof, and according to the tenor and effect, true intent and meaning of the said agreement, and the promise and undertaking of said defendant in that respect made as aforesaid, he the said defendant became liable to pay and ought to have paid the said plaintiff the said sum of nine pounds nine shillings, so agreed to be paid by the party neglecting to perform the said agreement as aforesaid, to wit, at, &c. whereof said defendant afterwards, to wit, on, &c. had notice: Yet, &c. &c. (common conclusion for the nine pounds nine shillings). (2d Count like the first, only making the breach NOT LETTING generally. 3d and 4th Count like the 1st and 2d, only omitting every thing relative to the deposit, and make the agreement to ASSIGN instead of LET. 5th, Money had and received, &c. &c.) V. LAWYERS.

Concerning the SALE, DELIVERY, EXCHANGE, and CARRIAGE of GOODS, CATTLE, &c. and GOODS LENT and LET TO HIRE; (*inter alia*) of BAILMENTS, (See NEGLIGENCE,) and for DECEIT in the SALE, &c. and on WARRANTY.

MIDDLESEX. If Elizabeth Grantham make you secure, then put John Willan, late of London, that he be before our lord the king on the morrow of St. Martin, wheresoever, &c. to shew, that whereas the said Elizabeth heretofore, to wit, on, &c. at, &c. had, at the special instance and request of the said John, bind the bargain; the defendant promised to pay the remainder of the money at Michaelmas, and to take away the hay at the same time; but if he should suffer the hay to remain on the land after the day, he promised to pay the rent for that land. The defendant neither paid the remainder of the purchase money, cleared away the hay at the time appointed, nor paid the rent that afterwards became due.

bargained

bargained and sold unto him the said John, at and for a large sum of money, to wit, the sum of one hundred and fifty pounds, of lawful, &c. of which the said John had paid a part, to wit, the sum of ten pounds ten shillings, by way of earnest, a certain large quantity of hay, to wit, two ricks of hay, of her the said E. then standing and being in and upon certain land, at, &c. for which the said E. was liable to pay rent whilst the said hay remained; and the said Elizabeth having then and there a right to call upon the said John for the payment of the remainder of the said money, for which she so sold the hay as aforesaid, and for the removal of the said hay from off the said land whereon the same so was as aforesaid, and being then and there desirous of such payment being made to her, and of the said hay being so removed, in order to prevent her any longer paying rent for the said land whereon the same so was as aforesaid; he the said John, in consideration of such several premises aforesaid, and also in consideration that the said E. at the like special instance and request of the said John, would give him time for the payment of the remainder of the said money for which the said hay was so sold to him as aforesaid, and for the clearing away of the said hay, undertook, &c. the said Elizabeth, that he the said John would pay the remainder of the said money for which the said hay was so sold to him as aforesaid, unto her the said Elizabeth, in the course of a fortnight, and that he would clear away the said hay on or before Michaelmas Term then next following; or if it continued longer on the said land, whereon the same so was as aforesaid, that he would pay the rent that should be thereby occasioned or incurred, And the said plaintiff in fact saith, that she confiding in the said promise and undertaking of the said John, did give time unto the said defendant for the payment of the said remainder of the said sum of money for which the said hay was so sold as aforesaid, and for the clearing away the said hay, pursuant to his aforesaid agreement in that behalf; but the said John did not on or before the said Michaelmas next after the making of his said promise and undertaking, clear away, nor has he as yet cleared away the said hay, but, on the contrary, hath suffered and permitted the same to be, remain, and continue, and the same still continues on the same land where the same so was at the time of the aforesaid sale thereof, whereby the said E. hath become liable to pay, and hath been forced and obliged to pay a large sum of money, to wit, the sum of pounds, for the rent of the said land, since the said time at which the said John ought to have cleared away the said hay as aforesaid, and occasioned by the same not being then cleared away, but continued thereon as aforesaid; whereof the said defendant afterwards, to wit, on, &c. had notice. And although the said defendant was then and there requested by the said E. to pay the said rent, and also the remainder of the said money for which the said hay was so sold to him as aforesaid, according to the tenor and effect, true intent and meaning of his aforesaid promise in that behalf: Yet the said defendant, not, &c. but, &c. did not in the course of a fortnight after the making of his
promise

promise and undertaking, and which hath long since elapsed, pay, nor has he as yet paid the remainder of the said money for which the said hay was sold to him as aforesaid, amounting to a large sum of money, to wit, the sum of pounds, of like lawful, &c. or any part thereof unto the said Elizabeth, nor has he as yet paid or reimbursed her the said rent, so occasioned and incurred by the said hay not being cleared away as aforesaid, or any part thereof, but he so to do hath hitherto wholly refused, and still refuses, contrary to the tenor of his aforesaid promise in that behalf, and in breach and violation thereof, to wit, at, &c.

V. LAWES.

MIDDLESEX, to wit. Thomas Bedford complains against W. Bromfield, esquire, being, &c. for that whereas before the time of making the promise and undertaking hereinafter mentioned, the said Thomas Arthur Bedford, deceased, which said A. B. deceased the said Thomas hath survived, to wit, at W. in the said county, in the lifetime of the said A. were executors of the last will and testament of J. B. deceased, and as such executors of the last will and testament of the said John, before and at the time of making the promise and undertaking hereinafter mentioned, was possessed of and entitled to a moiety of the interest of and in certain letters patent of his majesty our sovereign lord the now king, by his said majesty before that time granted to W. L. the said W. B. and divers other persons in the said letters patent named, for the sole making of fictile pipes and other fictile wares, and also of and in a moiety of all the stock in trade, utensils, and implements used in making the said fictile pipes, and other fictile wares; and being so possessed thereof in the lifetime of the said Arthur, to wit, on the fourteenth of July 1769, at W. aforesaid, in the said county, by agreement by and between the said plaintiff and the said A. of the one part, and the said defendant of the other part, in manner and form following, *i. e.* the said T. and A. did agree to sell to the said W. B. all the said share and interest of them the said Thomas and A. as executors of the said J. B. of and in his said majesty's letters patent, and of and in all the said stock and trade, tools, utensils, and implements used in making the said fictile pipes, and other fictile wares; and the said W. B. did agree to purchase all the said share of them the said Thomas and Arthur of and in the said letters patent, and of and in the said stock, tools, utensils, and implements, and in making the said fictile pipes, and other fictile wares: and it was then and there agreed by and between the said Thomas and Arthur, and the said W. B. that the value of the said letters patent, stock in trade, tools, utensils, and implements was three hundred and thirty pounds sixteen shillings; and that the said W. B. his executors, administrators, and assigns should pay to the said Arthur and Thomas, their executors, administrators, and assigns, such a proportion of the said sum of three hundred and thirty pounds sixteen shillings as the share and interest

Declaration by a surviving executor against defendant for not paying the purchase money for testator's share and interest in a patent for making fictile pipes.

interest of the said Thomas and Arthur of and in the said letters patent, stock, tools, utensils, and implements then bore to the share and interest of the said W. B. therein, on or before the last day of August then next ensuing; and that the said Thomas and Arthur should, upon such payment, convey their share and interest of and in such letters patent, stock, tools, utensils, and implements to the said W. B. his executors, administrators or assigns: and that the said W. B. his executors, administrators, or assigns should be chargeable from Midsummer-day then last past, with the whole rent of the houses and premises where the said trade had been carried on. And the said agreement being so made, &c. (Mutual promise.) And the said Thomas avers, that the share and interest of the said Thomas and Arthur in the said letters patent, stock, tools, utensils, and implements, at the time of making the said agreement, bore an equal proportion to the share and interest of the said W. B. therein, that is to say, they the said Thomas and Arthur had one moiety thereof, and the said W. B. the other moiety thereof, to wit, at W. aforesaid. And the said Thomas further avers, that the proportion of the said sum of three hundred and thirty pounds sixteen shillings which belonged to the said Thomas and Arthur, in the life-time of the said Arthur, of and in the said letters patent, stock, tools, utensils, and implements at the time of making the said agreement, bore to the share and interest of the said W. B. therein, was one hundred and sixty-five pounds eight shillings, one moiety of the said three hundred and thirty pounds sixteen shillings, (that is to say) at W. aforesaid, in the said county; whereof, &c. had notice. (2d Count, goods sold and delivered—quantum val. 4th, Work and labour—quantum meruit. Money paid, laid out and expended, and had and received. Breach to the whole.)

F. BULLER

Declaration
by administratrix.
1st Count against
defendant for not paying
the plaintiff a
3d share of a
ship by install-
ments accord-
ing to promise.

CUMBERLAND, to wit. Ann Armstrong, widow, administratrix of all and singular the goods and chattels, rights and effects which were of W. A. deceased, at the time of his death, who died intestate, complains against J. A. being, &c. for that whereas, on, &c. at, &c. in consideration that the said W. A. in his lifetime, at the special instance and request of the said J. A. had purchased in his own name, a certain brigantine or vessel called, &c. at or for the price or sum of four hundred pounds, for the use and in trust as to one thirty-second share thereof for the said J. A. he the said J. A. undertook, and then and there faithfully promised the said W. A. to pay him one thirty-second part or share of the said sum of four hundred and ninety pounds, in manner following, that is to say, a thirty-second part or share of twenty-one pounds part thereof when he the said J. A. should be thereto afterwards requested. And whereas also the said J. A. in the lifetime of the said W. A. to wit, on, &c. at, &c. was indebted, &c. [Money laid out.] And whereas also the said J. A. afterwards, and in the lifetime of the plaintiff to defendant.

3d Count, in-
debitatus as-
sumpsit for the
3d share of a
ship bargain-
ed and sold by

(aid)

said W. A. to wit, on, &c. at, &c. was indebted to the said W. A. in the further sum of fifty pounds of, &c. for a like share, to wit, a thirty-second part or share of another brigantine or vessel, by the said William before that time bargained and sold to the said J. A. at his like special instance and request, and being so indebted, &c. &c. And whereas also the said J. A. afterwards, and after the death of the said W. A. to wit, on, &c. at, &c. was indebted to the said Ann, &c. [Money paid, laid out, &c.] And whereas also afterwards, and after the death of the said W. A. to wit, on, &c. at, &c. was indebted to the said Ann, as administratrix as aforesaid, in the sum of other fifty pounds of, &c. for a certain share, to wit, a thirty-second share of another brigantine or vessel by the said W. A. in his lifetime before that time bargained and sold to the said J. A. at his like special instance and request, and being so indebted, &c. And whereas also, &c. [an account stated with the plaintiff as administratrix.] Yet the said J. A. not regarding, &c. but contriving, &c. the said W. A. in his lifetime, and the said Ann as administratrix as aforesaid, after the death of the said William, to which said Ann administration of all and singular, &c. &c. (Finish as common with *proferat* of letters of administration.)

Put some day after the date of the administration.

Conclusion to a Declaration at suit of an administratrix.

G. WOOD.

LONDON, to wit. Charles Mills v. George Shipley. For that whereas the said George, before and at the time of the making of the several promises and undertakings hereafter mentioned, exercised and carried on the trade and business of a dresser of skins into leather, to wit, at, &c.; and the said George so being a dresser of skins as aforesaid, whilst he so exercised and carried on such trade and business, to wit, on, &c. in consideration that the said Charles, at the special instance and request of the said George, had delivered, and caused to be delivered to the said George, divers large quantities of skins, to wit, one thousand one hundred skins of him the said plaintiff, of a large value, to wit, of the value of one hundred and fifty pounds of, &c. to be by him the said defendant, in the way of his said trade and business, dressed into leather for him the said plaintiff, for a certain reward to be therefore paid to him the said defendant, he the said defendant undertook, and faithfully promised the said plaintiff, that he the said defendant would dress such skins for him the said plaintiff, and take such due and proper care thereof, and also indemnify him the said plaintiff against any loss or damage of or to the same by the casualty of fire: and although the said skins were afterwards, and whilst the said defendant had the same for that purpose as aforesaid, to wit, on, &c. damaged and destroyed by the casualty of fire, and were thereby wholly and entirely lost; and although the said defendant was then and there required by the said plaintiff to indemnify him against such loss and damage, according to the tenor and effect of his aforesaid promise and undertaking in that behalf: Yet the said defendant, not regarding his said promise and

Declaration in assumpsit for the value of skins delivered by the plaintiff to the defendant to dress into leather, and which, together with the defendant's factory, were destroyed by fire, on an implied contract of indemnity.

ad and 3d Count nearly the same as first.
4th Count on a promise to redeliver the skins as soon as dressed. Breach for not delivering.
5th Count for not dressing skins delivered by plaintiff to defendant to dress, and accounting to the plaintiff for the same.

undertaking,

3d Count.

(In 3d Count.)
 (1) "after the delivery of the said last-mentioned skins to him the said George, and whilst he had the care thereof under the aforesaid bailment of the same."
 3d Count.
 4th Count.

undertaking, but contriving, &c. the said plaintiff did not nor would then and there indemnify, nor hath he as yet in any manner whatsoever indemnified him the said plaintiff against the said loss or damage, or any part thereof, but he so to do hath hitherto wholly refused, and still doth refuse, and the said plaintiff hath not as yet received any recompence or equivalent for the same, to wit, at, &c. *And whereas* afterwards, and whilst the said George so exercised and carried on such trade and business of a dresser of skins into leather as aforesaid, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered, and caused to be delivered to him the said defendant, in the way of his aforesaid trade and business of a dresser of skins into leather, divers large quantities of skins, to wit, one thousand one hundred skins of the said plaintiff of a large value, to wit, of the value of one hundred and fifty pounds, of, &c. to be dressed into leather by him the said defendant for the said plaintiff, he the said defendant undertook, &c. the said plaintiff to *according'y dress such last-mentioned skins for him the said plaintiff, and to take due and proper care thereof*; and although he the said George had and received the said several skins of and from the said Charles as aforesaid, on the occasion and for the purpose last aforesaid, to wit, at, &c.: Yet the said defendant, not regarding, but contriving, &c. the said plaintiff in this behalf, did not, whilst he had such skins as aforesaid, take due and proper care thereof, but omitted and neglected so to do; and on the contrary thereof, he the said defendant afterwards, and (2) *whilst the said last-mentioned skins were in his possession for the purpose last aforesaid*, to wit, on, &c. at, &c. took so little and such bad care of the said last-mentioned skins, and kept the same so negligently, that the said skins became and were thereby then and there burnt, damaged, destroyed, and consumed by fire, and were and are thereby wholly lost unto him the said plaintiff, to wit, at, &c. *And whereas*, &c. &c. (This Count same as the 2d Count, only omitting what is in italic, and inserting in lieu thereof what is in margin) And whereas afterwards, and whilst the said defendant so exercised and carried on such trade and business of a dresser of skins as aforesaid, to wit, on, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had delivered, and caused to be delivered in the way of his aforesaid trade and business, divers other large quantities, to wit, one thousand one hundred other skins of him the said Charles, of a large value, to wit, of the value of other one hundred and fifty pounds, of, &c. to be dressed by him the said defendant for the said plaintiff for a certain other reward to be paid unto him the said George, he the said defendant undertook, &c. the said plaintiff to redeliver the said last-mentioned skins unto him the said plaintiff when and as the same should be dressed, and when as he the said defendant should be thereto requested: And the said plaintiff in fact says, that although he the said George had and received the said last-mentioned skins of and from the said Charles

on

on the occasion and for the purpose last aforesaid, to wit, at, &c. ; and although afterwards, and before the exhibiting the bill of the said plaintiff, to wit, on, &c. a certain large part, to wit, &c. of the said last-mentioned skins, had been and were dressed into leather, and were then and there in the possession of the said George so dressed into leather ; and although the said plaintiff then and there requested the said defendant to *redeliver* such last mentioned skins unto him the said plaintiff, and then and there applied to him for the same ; and although he the said Charles was then and there ready and willing, and tendered and offered to pay the said defendant all charges for and on account of the said dressing of the said last-mentioned skins : Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, did not nor would not, when he was so requested as aforesaid, redeliver to the said Charles the said last-mentioned skins, or any part thereof, so dressed as aforesaid, or in any other state or condition whatsoever, but he so to do then and there, and always from thence hitherto, hath refused and neglected, and on the contrary thereof, afterwards, to wit, on, &c. converted and disposed thereof to his own use. *And whereas* afterwards, and whilst the 5th Count.

the said George exercised and carried on such trade and business of a dresser of skins into leather as aforesaid, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said George, had delivered, and caused to be delivered to the said George in the way of his aforesaid trade and business, divers other large quantities of skins of the said plaintiff, of a large value, to wit, of, &c. to be dressed into leather for him the said plaintiff for a certain other reasonable reward to him the said defendant, he the said defendant undertook, &c. the said Charles to accordingly dress such last-mentioned skins for him the said Charles, and to render him a reasonable and just account thereof whenever he should be thereunto required ; and although he the said defendant had and received the said last-mentioned skins for the purpose of so dressing the same as aforesaid ; and although a reasonable time for that purpose hath long since elapsed ; and although, after the expiration of that time, and before the exhibiting of the bill of the said plaintiff, to wit, on, &c. the said plaintiff requested him the said George to render him a just and reasonable account of and in respect of the said last mentioned skins : Yet the said defendant, not regarding, &c. but contriving, &c. hath not as yet dressed into leather for him the said Charles the said last-mentioned skins, or any part thereof, but he so to do hath hitherto wholly refused, and still refuses to do ; and the said last-mentioned skins are still wholly undelivered and unaccounted for unto him the said Charles, contrary to the tenor and effect of the said last-mentioned promise and undertaking of the said defendant, to wit, at, &c. *And whereas* afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time per- 6th Count, on a promise to pay quantum value-
bunt for some
skins.

mitted and suffered the said defendant to have, retain, and convert to his own use and benefit, divers other large quantities of skins of him the said plaintiff, before then delivered to the said plaintiff, and that the said defendant, under and by virtue of that permission, had accordingly retained and converted such skins to his own use and benefit, he the said defendant undertook, &c. the said plaintiff to pay him so much money as the said last-mentioned skins were reasonably worth at the time of such conversion thereof, whenever he the said George should be thereto afterwards requested: And the said plaintiff avers, that the said last-mentioned skins, at the time of the conversion, were reasonably worth a large sum of money, to wit, the sum of pounds, of, &c. to wit, at, &c. whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice. *And whereas, &c. (goods sold and delivered, &c. &c.) And whereas, &c. (quantum meruit to dicto.) And whereas, &c. (money had and received; an account stated; and common conclusion.)* Defendant pleaded the plea of "non assumpsit."

7th Count.

8th Count.

9th Count.

I Am of opinion, that in the case stated, the defendant is not answerable to the owner for the loss of the skins, the destruction of them being by fire, without any fault or negligence, merely by accident. The ground of defence is the manner of the loss, which must be proved; and if there is no fault imputable to Mr.

S. (the defendant) or his servants, the fire will be considered as the act of God; in which case, even a common carrier would be excused, and *a fortiori* a manufacturer having in his hands goods in the course of his business to be manufactured.

EDWARD BEARCROFT.

Declaration in C. B. in assumpsit, that in consideration plaintiff would sell an undivided moiety of liquors, defendant agreed to take them, and pay plaintiff by acceptances at two and three months.
2d Count, for a moiety of liquors bargained and sold.
3d Count, a quantum meruit.

LONDON, to wit. John Law, late of Rotherhithe in the county of Surry, dealer in stores, was attached to answer unto Joseph B. in a plea of trespass on the case; and thereupon the said Joseph, by Alexander Dickson his attorney, complains, for that whereas the said Joseph, before and at the time of the making the promises and undertakings of the said John hereafter next mentioned, was lawfully possessed of divers large quantities of spirituous liquors, goods, and merchandizes of a large value, to wit, of the value of two hundred and ninety pounds five shillings of lawful money of Great Britain, being his own proper goods and chattels; and being so thereof possessed heretofore, to wit, on the tenth of June A. D. 1788, at London, to wit, in the parish of St. Mary le Bow in the ward of Cheap, in consideration that the said Joseph, at the special instance and request of the said John, would bargain and sell to him the said John one undivided moiety or half part of the said liquors, goods and merchandizes at and for a certain sum of money, to wit, the sum of one hundred and forty-five pounds two shillings and sixpence of like lawful money of Great Britain, to be therefore paid by the said John, he the said John undertook, and then and there faithfully promised the said Joseph to pay him the said sum of one hundred and forty-five pounds two shillings and sixpence in ready money, or by his the said

said John's acceptance at one, two, and three months, from the
 same day and year aforesaid: And the said Joseph avers, that he,
 confiding in the said promise and undertaking of the said John so
 by him made in manner and form aforesaid, did afterwards, to wit,
 on the same day and year aforesaid, at L. aforesaid, in the parish
 and ward aforesaid, bargain and sell the said undivided moiety, or
 half part of the said liquors, goods, and merchandizes to the said
 John, who then and there bought the same at and for the said sum
 of one hundred and forty-five pounds two shillings and sixpence:
 Yet the said John, not regarding his said promises and undertak-
 ings so by him made in manner and form aforesaid, but contriving
 and fraudulently intending craftily and subtilly to deceive and de-
 fraud the said Joseph in this behalf, hath not paid the said sum of
 one hundred and forty-five pounds two shillings and sixpence, or
 any part thereof, to him the said Joseph in manner aforesaid, or
 otherwise howsoever (although to do this he the said John was re-
 quested by the said Joseph afterwards, to wit, on the same day and
 year aforesaid, and often afterwards, to wit, at L. aforesaid in the
 parish and ward aforesaid); but he to do this hath hitherto wholly
 refused, and still refuses so to do. And whereas the said John af-
 terwards, to wit, on the first of April A. D. 1790, at L. aforesaid
 in the parish and ward aforesaid, was indebted to the said Jo-
 seph in the sum of two hundred pounds of lawful money of Great
 Britain, for one undivided moiety or half part of certain other
 liquors, goods and merchandizes by the said Joseph before that
 time bargained and sold to the said John, and at his like special
 instance and request; and being so indebted, he the said John, in
 consideration thereof, afterwards, to wit, on the same day and
 year last aforesaid, at L. aforesaid in the parish and ward aforesaid,
 undertook, and then and there faithfully promised the said Joseph
 to pay him the said last-mentioned sum of money, when he the said
 John should be thereto afterwards requested. And whereas af-
 terwards, to wit, on the same day and year last aforesaid, at L.
 aforesaid in the parish and ward aforesaid, in consideration that the
 said Joseph had before that time bargained and sold one other un-
 divided moiety or half part of certain other liquors, goods, and
 merchandizes to the said John, and at his like special instance and
 request, he the said John undertook, and then and there faithfully
 promised the said Joseph to pay him so much money as he therefore
 reasonably deserved to have of the said John, when he the said
 John should be thereto afterwards requested: And the said Joseph
 avers, that he therefore reasonably deserved to have of the said
 John the further sum of two hundred pounds of like lawful, &c.
 to wit, at L. aforesaid in the parish and ward aforesaid; whereof the
 said John afterwards, to wit, on the same day and year last aforesaid,
 there had notice. (Other Counts for goods sold and delivered;
 money paid, &c.; and common breach to the latter Counts.)

Declaration in MIDDLESEX, to wit. J. S. complains of R. B. S. (having privilege of parliament,) and T. L. T. W. and J. R. being the proprietor of shares of admissions to Covent-garden and Drury lane Theatres as in the proprietors of the theatres for breach of agreement to purchase them on particular terms.

(1) "And" ing privilege of parliament,) and T. L. T. W. and J. R. being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself, of a plea of trespass on the case, &c. for that (1) wheteas before the making of the promise and undertaking hereafter next mentioned, to wit, on the twenty-seventh day of July in the year of Our Lord 1789, the said R. B. and the said T. L. then being joint proprietors of a certain theatre called the Theatre Royal in Drury-lane, and one T. H. then being the proprietor of a certain other theatre called the Theatre Royal in Covent-garden, had respectively granted to the said J. S. divers, to wit, one hundred written instruments or licences under the hands and seals of the said R. B. T. L. and T. H. respectively, purporting to be joint freedoms or free admissions to the said Theatres Royal in Drury lane and Covent-garden respectively, to see the theatrical and other performances there, in manner and for the time therein respectively mentioned, at and for a large sum of money then paid to the said R. B. S. and T. L. and to the said T. H. by the said plaintiff for each and every of the said licences or joint freedoms so by them granted as aforesaid, that is to say, at and for the sum or price of sixty pounds of lawful money of Great Britain, for each and every of the said licences or joint freedoms so by them respectively granted to the said plaintiff as aforesaid. (a) And whereas after the granting of the said joint freedoms and free admissions as above mentioned, and before and at the time of making the promise and undertaking hereinafter next mentioned, the said T. W. and the said J. R. became and were joint proprietors together with the said R. B. and the said T. L. of the said Theatre Royal in Drury-lane, and still are proprietors thereof. And whereas, after the time of the granting of the said freedom as above mentioned, and before the time of the making the promise and undertaking hereinafter next mentioned, the said plaintiff had sold and disposed of divers of the said joint freedoms or free admissions, but the remainder thereof then remained in the possession of the said plaintiff undisposed of. And whereas the said defendants so being such joint proprietors of the said Theatre Royal in Drury lane as aforesaid, and divers of the said joint freedoms so granted by the said R. B. T. L. and T. H. as above mentioned, still remaining in the hands and possession of the said plaintiff undisposed of as aforesaid, on the second day of February to wit, on the 9th in the year of Our Lord 1791, at Westminster (2) in the said day of August county, in consideration that the said plaintiff, at the (3) special instance and request of the said defendants, would agree to deliver up to them (4) the moiety of such of the joint freedoms granted by aforesaid," (3) "like" (4) "divers, to wit, sixty-eight other freedoms or free admissions to the theatre royal in Drury-lane, of which said last mentioned theatre the said defendants were proprietors as aforesaid; which said last mentioned freedoms had been before that time duly granted by certain proprietors of the said theatre to the said plaintiff for a certain valuable consideration paid by the said plaintiff for the same, they the said defendants undertook, and to the said plaintiff then and there faithfully promised the said plaintiff to accept and take back the same from the said plaintiff, and to pay for them what he the said plaintiff paid for the same."

(a) Westley and Richardson became partners, after the grants for the admissions.

the

the said R. B. and T. L. and the said T. H. as above mentioned, as then remained unsold and undisposed of by the said plaintiff, they the said defendants undertook, and to the said plaintiff then and there faithfully promised to accept the same of him the said plaintiff, and to repay to him the said plaintiff the original price paid by the said plaintiff for the said joint freedoms as aforesaid, and to pay to the said plaintiff for the same on the twenty-second day of August then next, and to pay and allow to the said plaintiff interest for the sum coming to him for and by reason of the said repurchase from the said twenty-second day of February in the year aforesaid. And the said plaintiff in fact says, that he the said plaintiff afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid in the said county, did agree to deliver up (5) to them the said defendants the moiety of such of the joint freedoms, granted by the said R. B. and T. L. and the said T. H. as above mentioned, as then remained unsold and undisposed of by the said plaintiff, and (6) was then and there (7) ready and willing to deliver up the same to the said defendants as aforesaid, and from that time hitherto hath been and still is ready and willing to deliver up the same to them; and afterwards, to wit, on the day and year last aforesaid, at Westminster aforesaid in the said county, tendered and offered to deliver up the same to the said defendants as aforesaid. And the said plaintiff in fact further says, (8) that at the time of making the said agreement, promise, and undertaking, there were and still are remaining in the hands and possession of the said plaintiff, divers, to wit, sixty-eight of the said joint freedoms unsold and undisposed of, and that the original price paid by the said plaintiff for the said joint freedoms so remaining unsold amounts to a large sum of money, to wit, the sum of four thousand and eighty pounds of lawful money of Great Britain, to wit, at Westminster aforesaid in the said county; of all which said premises the said defendants afterwards, to wit, on the day and year last aforesaid, (9) there had notice; Yet the said defendants, not regarding their said promise and undertaking so by them made as aforesaid, (10) would not, nor would either of them accept and take back (11) the moiety of the said joint freedoms of and from the said plaintiff as above mentioned; nor did the said defendants, or either of them, on the twenty-second day of August then next ensuing, or at any other time whatsoever, pay to the said plaintiff the sum of two thousand and forty pounds, being a moiety of the said sum of four thousand and eighty pounds so being the original price paid by the said plaintiff for such of the joint freedoms granted to him by the said R. B. T. L. and T. H. as aforesaid, which, at the time of the making of the promise and undertaking by the said defendants as aforesaid, remained and still remains unsold and undisposed of by the said plaintiff as aforesaid, together with interest upon the said two thousand and forty pounds sum of 2040l. so being the original price or sum paid by the said plaintiff for the same, and to accept and take back the said last-mentioned freedoms, and to pay to the said plaintiff the said last-mentioned sum of 2040l. they the said defendants do and each of them doth still refuse."

(5) "the said last-mentioned freedoms"

(6) "did"
(7) "offer"

(8) "that the original price or sum paid by the said plaintiff for the said last-mentioned freedoms amounts to a large sum of money, to wit, the sum of 2040l. whereof"

(9) "at Westminster aforesaid in the county aforesaid,"

(10) "have, and each of them hath, hitherto wholly refused to"

(11) "of and from the said plaintiff, the said last mentioned freedoms as last aforesaid, or to pay to the said plaintiff the said last mentioned"

from the said second day of February in the year aforesaid, nor any part thereof, but to accept and take back the said moiety of and from the said plaintiff, or any part thereof, and to pay the said sum of two thousand and forty pounds with interest as aforesaid, or any part thereof, to the said plaintiff, they the said defendants have, and each of them hath, hitherto wholly refused, and still do and each of them doth refuse, to wit, at Westminster aforesaid in the said county. (2d Count; leaving out what is in italic in the 1st Count, and inserting what is within inverted commas in the margin. Counts for divers "grants, licences, freedoms, and free admissions to the theatre royal in Drury-lane, and other goods, wares, and merchandizes sold and delivered;" *quantum meruit*; ditto bargained and sold, and *quantum meruit*; money had and received, paid, lent; account stated; and common conclusion)

The agreement is in these words:
 "Terms were agreed to between Mr. S. Mr. H. and Mr. S. in January and February last, by which Mr. S. agreed to repurchase his moiety of such of the joint freedoms granted by him and Mr. H. as remained unsold by Mr. S. at the

original price paid by Mr. S. Mr. S. is willing to abide by those terms, and to pay Mr. S. interest for the same, coming to him on the repurchase, from the day of that meeting, August 9th, 1791. Payment to be made on Monday se'night.

R. B. S. J. S."

Special assumpsit for the price of a share in a gelding bargained and sold.

1st Count, would sell third part of interest in gelding, consideration executory.

NORFOLK, to wit. Nathaniel Fish complains of Charles Hawkesly, being in the custody of the marshal of the marshal's office of our lord the king, before the king himself; for that whereas the said Nathaniel, before and at the time of the making of the promise and undertaking of the said Charles hereinafter next mentioned, to wit, on the tenth day of September 1787, at Lynn in the county of Norfolk, was possessed of a certain gelding of great value, to wit, of the value of thirty-six pounds of lawful money of Great Britain, whereof the said Charles, before and at the time of the making of the said promise and undertaking of him the said Charles hereinafter next mentioned, to wit, on the same day and year aforesaid, at L. aforesaid, in the county of N. had notice; and thereupon afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the county of N. in consideration that the said Nathaniel, at the special instance and request of him the said Charles, would sell to him the said Charles one-third part or share of his the said Nathaniel's interest in the said gelding, he the said Charles undertook, and then and there faithfully promised the said Nathaniel to pay him the sum of twelve pounds, when the said Charles should be thereunto afterwards requested; And the said Nathaniel in fact says, that he, confiding in the said promise and undertaking of the said Charles, afterwards, to wit, on the same day and year aforesaid, at Lynn aforesaid, in the county aforesaid, did sell to the said Charles one-third part or share of his the said Nathaniel's interest in the said gelding; whereof the said Charles, afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the said county of N. had notice: and by reason of the said premises, and by virtue of his said promise and undertaking, then and there became liable to pay to the said Nathaniel the

said sum of twelve pounds, when he the said Charles should be thereunto afterwards requested. *And whereas also* afterwards, to wit, on the same day and year aforesaid, at Lynn aforesaid, in the said county of Norfolk, in consideration that the said Nathaniel, at the special instance and request of the said Charles, had before that time sold to the said Charles one-third part of a certain other gelding at the time of the said last-mentioned sale, the property of him the said Nathaniel, and then and there valued by the said Nathaniel and the said Charles at the price or sum of thirty-six pounds, he the said Charles undertook, and then and there faithfully promised the said Nathaniel to pay him the sum of twelve pounds of lawful money of Great Britain, when he the said Charles should be thereto afterwards requested. *And whereas also*, before the time of the making of the promise and undertaking of the said Charles hereinafter next mentioned, to wit, on the tenth of September in the year of Our Lord 1787 aforesaid, at Lynn aforesaid, in the said county of N. the said Nathaniel was possessed of a certain other gelding of great value, to wit, of the value of thirty-six pounds of lawful money of Great Britain; and the said Nathaniel being so thereof possessed, on the same day and year last aforesaid, at L. aforesaid, in the said county of N. in consideration that the said Nathaniel, at the special instance and request of the said Charles, would agree to permit and suffer the said Charles to become a purchaser of a certain part or share of the said last mentioned gelding, and would send and deliver, or cause to be sent and delivered, the said last mentioned gelding to one John Church at Epping in the county of Essex, to be by him the said J. Church entered or matched *to run a certain horse-race* or certain horse-races, he the said Charles undertook, and then and there faithfully promised the said Nathaniel, that if the said John Church, upon being applied to and requested to become a purchaser of one-fourth part or share of the said last mentioned gelding, should refuse to purchase such fourth part or share, he the said Charles would become a purchaser of one-third part or share of the said last mentioned gelding, and would pay to the said N. the price or sum of twelve pounds of lawful money of Great Britain for such third part or share; and that if the said John Church should agree to become a purchaser of one-fourth part or share of the said last mentioned gelding, he the said Charles would also become a purchaser of one-fourth part or share of the said last mentioned gelding, and would pay to the said Nathaniel the price or sum of nine pounds for such fourth part or share of the said last mentioned gelding: And the said Nathaniel avers, that he, considering in the said last mentioned promise and undertaking of the said Charles so by him made as last aforesaid, to wit, on the same day and year last aforesaid, to wit, at L. aforesaid, in the county of N. did agree to permit and suffer the said Charles to become a purchaser of a certain part or share of the said last mentioned gelding, and did then and there cause the said last mentioned gelding to be sent and delivered to the said John Church at Epping aforesaid, to be by him entered or matched, to run a certain horse-race

2d Count, had sold third, valued at 36l for 12l consideration executed.

3d Count, agreed to send the gelding to J. C. at, &c. to be matched to run; and if J. C. would take a fourth, defendant would, otherwise a third with plaintiff. J. C. would not, defendant took a third at 12l.

4th Count, for
third of a geld-
ing bargained
and sold.

or certain horse-races. And the said Nathaniel further in fact says, that the said John Church afterwards, to wit, on the same day and year last aforesaid, at Lynn aforesaid in the said county of Norfolk, was applied to and requested to become a purchaser of one-fourth part of the said last mentioned gelding, and that the said John Church then and there refused to become a purchaser of the said fourth part of the said last mentioned gelding; of all which premises he the said Charles afterwards, to wit, on the same day and year last aforesaid, at Lynn aforesaid, in the said county of Norfolk, had notice; and then and there, by the permission of the said Nathaniel, became purchaser of one-third part or share of the said last mentioned gelding; by reason whereof, and by virtue of the aforesaid promise and undertaking of him the said Charles so made as last aforesaid, he the said Charles afterwards, to wit, on the same day and year last aforesaid, at Lynn aforesaid, in the said county of N. became liable to pay to the said Nathaniel the said price or sum of twelve pounds, for the said third part of the said last mentioned gelding, when he the said Charles should be thereunto afterwards requested. *And whereas* also the said Charles afterwards, to wit, on the first day of November in the year of Our Lord 1787 aforesaid, at Lynn aforesaid, in the said county of N. was indebted to the said Nathaniel in the sum of twelve pounds of lawful money of Great Britain, for one-third part or share of a certain gelding of the said Nathaniel, by the said Nathaniel before that time bargained for with, and sold to the said Charles at his special instance and request; and being so indebted he the said Charles, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Lynn aforesaid, in the said county of Norfolk, undertook, and then and there faithfully promised the said Nathaniel to pay him the said last mentioned sum of money, when afterwards he the said Charles should be thereto requested.

Declaration for
not paying for a
watch which
plaintiff sold to
defendant, and
which was to
be paid for on
marriage or
death, which
should first hap-
pen.

LANCASHIRE, ff. F. S. was attached to answer G. H. &c. for that whereas the said F. the fourth day of February in the year of Our Lord 1778, at P. in the said county, in consideration that the said G. at the special instance and request of the said F. had sold and delivered to him the said F. by way of sale, a certain silver watch of him the said G. he the said F. for himself, his executors and administrators, undertook, and then and there faithfully promised the said G. to pay to him for the same the sum of six pounds of lawful, &c. upon the marriage of him the said F. or upon the day of his death, which should first happen: And the said G. avers, that he, confiding in the said promise and undertaking of the said F. afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, at the special instance and request of the said F. did sell and deliver by way of sale to the said F. the said silver watch of him the said G.: And the said G. doth further aver, that the said F. afterwards, to wit, on the twenty-fourth day of January in the year of Our Lord 1783, at L. aforesaid, took to wife one R. S. and by reason whereof the said sum of six pounds

pounds became due and payable from the said F. to the said G. to wit, at L. aforesaid; whereof the said F. afterwards, to wit, the same day and year last above said, there had notice. And whereas also (another Count the same as the last): Yet the said F. not regarding his said several promises and undertakings made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said G. in this respect, hath not yet paid the said sum of six pounds, or any part thereof, to the said G. (although to do this the said F. afterwards, and after the marriage celebrated between them the said F. and the said R. to wit, on the twenty-fifth day of January in the year of Our Lord 1783, at L. aforesaid, by the said G. was requested); but the same to him, &c. (*Damnum* twenty pounds.)

MIDDLESEX, *J.* M. D. late of, &c. gentleman, was attached to answer unto T. G. of a plea of trespass on the case, &c.; and whereupon the said T. G. by his attorney, complains, for that whereas, on the fourth of May 1750, at, &c. in consideration that the said T. G. at the special instance, &c. of the said M. D. would cause to be delivered to the said T. G. divers goods and merchandizes, to wit, two pieces of flowered velvet on sale, or to return the same within three days then next following, he the said M. D. undertook, and then and there faithfully promised the said T. G. to return the said two pieces of velvet to the said T. G. in three days then next following, or otherwise he the said M. D. would be the buyer of the said two pieces of velvet at and for the price or sum of one hundred pounds, and would pay to the said T. G. the said sum of one hundred pounds for the same, whenever afterwards he should be thereto requested: And the said T. G. avers, that he, confiding in the said promise and undertaking of the said M. D. afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, at the instance and request of the said M. D. did cause to be delivered to the said M. D. the said two pieces of velvet on sale or return; and that the said M. D. did not, within the space of three days then next following, return the said two pieces of velvet, or any part thereof, to the said T. G.: and by reason of the premises he the said M. D. according to his promise and undertaking aforesaid, became the buyer of the said two pieces of velvet at and for the same to the said T. G. to wit, at Westminster aforesaid. (Counts for goods sold and delivered; money had and received; and common conclusion.)

Declaration in C. B. on special assumpsit, to pay for goods taken on condition of buying if not returned in a limited time.

HERTFORDSHIRE, *J.* Thomas Goulding complains of Joshua May, 'being in the custody, &c.' for that whereas, on the first day of January, A. D. 1744, at Hertford in the said county, a certain discourse was moved and had between the said Thomas and Joshua May, to wit, that the said Thomas Goulding was to give his gelding and a sum of money in exchange for plaintiff's gelding; for non-payment of the money the action is brought.

Declaration in B. R. on an agreement for exchange of cattle. Defendant

and

and the said Joshua, of and concerning a certain gelding of the said Thomas, and a certain gelding of the said Joshua; and upon that discourse it was then and there agreed upon between the said Thomas and the said Joshua, that the said Thomas should give and deliver up to the said Joshua his said gelding to and for the sole use of the said Joshua, and that the said Joshua should give and deliver up to the said Thomas his said gelding to and for the sole use and benefit of the said Thomas; and that the said Thomas should have, receive, and accept of the said Joshua his said gelding, and that the said Joshua should have, receive, and accept of the said Thomas his said gelding; and that the said Joshua should pay to the said Thomas, over and above the said gelding so agreed to be delivered by the said Joshua, the sum of one pound eleven shillings and sixpence; which said sum of money and gelding of the said Joshua were agreed between the said parties to be paid by the said Joshua to the said Thomas in exchange for the said gelding of the said Thomas. And whereas afterwards, to wit, on the same day and year, at, &c. aforesaid, in consideration that the said Thomas (Mutual promises). And the said Thomas in fact saith, that in pursuance of the said agreement on his part, he the said Thomas afterwards, to wit, on the same day and year, at Hertford aforesaid, gave and delivered to the said Joshua his said gelding to and for his the said Joshua's own sole use and benefit; and although he the said Thomas well and faithfully performed and fulfilled all and every thing in the said agreement contained on his part to be performed and fulfilled, according to the form and effect of his said agreement and promise and undertaking so made, to wit, at H. aforesaid; and although the said Joshua then and there delivered his gelding to the said Thomas to and for his the said Thomas's own sole use and benefit, according to the form and effect of the said agreement: Yet the said Joshua, not regarding his said promise and undertaking as to the payment of the said one pound eleven shillings and sixpence, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this respect, hath not as yet paid the said sum of money, or any part thereof, to the said Thomas (although to do this he the said Joshua was requested by the said Thomas afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at, &c. aforesaid); but he to pay the same to him, or to perform his said agreement and promise in that respect, he the said Joshua hath hitherto wholly refused, and still refuses. (Counts for cattle, goods, wares, and merchandizes sold and delivered by the said Thomas to the said Joshua; and common conclusion to those Counts.)

In consideration
that plainiff,
who had sold
goods to a third
person, would
allow 5l. per cent. if
plaintiff was ready to
pay, yet defendant would not pay.

MIDDLESEX, to wit. John Sellers and Joseph Bacon, late of London, warehousemen, were attached to answer Alexander Mackintosh in a plea of trespass on the case; and whereupon the

Breach, that though plain-

iff

Said Alexander, by A. B. his attorney complains, for that whereas heretofore, to wit, on the seventeenth day of September in the year of Our Lord 1785, to wit, at Westminster in the county of Middlesex, in consideration that the said Alexander, at the special instance and request of one David Scott, had before that time sold and delivered to him the said David Scott, divers goods, wares, and merchandizes of a large value, to wit, of the value of eight pounds ten shillings of lawful money of Great Britain, they the said John and Joseph undertook, and then and there faithfully promised the said Alexander, that if he the said Alexander would allow five pounds per cent. (that is to say, if the said Alexander would make a deduction from the said sum of eight pounds ten shillings in the proportion and at and after the rate of five pounds in one hundred pounds), they the said John and Joseph would advance to the said Alexander the sum of eight pounds one shilling and sixpence (being the remainder of the said sum of eight pounds ten shillings, after making such deduction as aforesaid); and although he the said Alexander hath been always, from the time of making the said promise and undertaking of the said John and Joseph, hitherto and still is ready and willing to make such deduction or allowance as aforesaid; and although the said John and Joseph afterwards, to wit, on the day and year aforesaid, at Westminster in the county of Middlesex aforesaid, had due and proper notice thereof, and were then and there requested to advance to him the said Alexander the said sum of eight pounds one shilling and sixpence; and which said sum of eight pounds one shilling and sixpence they the said John and Joseph then and there ought to have advanced to the said Alexander, according to the tenor and effect of their promise and undertaking aforesaid: Yet the said John and Joseph, not regarding their said promise and undertaking so by them made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Alexander in this behalf, did not nor would, at the said time when they were so requested as aforesaid, or at any time afterwards, advance the said sum of eight pounds one shilling and sixpence, or any part thereof, to the said Alexander, but have hitherto wholly refused and neglected so to do; and the said sum of eight pounds one shilling and sixpence, and every part thereof, still remains, and is wholly due and unpaid to him the said Alexander, to wit, at Westminster, in the county of Middlesex aforesaid. (Goods sold and delivered; and money Counts; common conclusion.)

Drawn by MR. TIDD.

YORKSHIRE, to wit. A. Roodhouse complains of B. Declaration in Gofnay, being in the custody of the marshal of the marshalsea of Special assump- our lord the now king, before the king himself, in a plea of tref- sit for the price of a stack of hay sold by auction 28th October, on consideration to be paid for 1st January following, and to be suffered to remain in plaintiff's premises till 1st May following. Action brought before 1st May, because defendant took away part by force, and becoming insolvent wanted to take away residue without paying it; it, which plaintiff resisted.

pass

pass on the case, &c. for that whereas heretofore, to wit, on the twenty-eighth of October in the year of Our Lord 1789, to wit, at Wakefield, in the county of York, in consideration that the said A. Roodhouse, at the special instance and request of the said B. Gosnay, would sell to the said B. Gosnay a large stack of hay of him the said A. Roodhouse, then standing and being in a certain fold of the said A. Roodhouse there, for a certain sum of money, to wit, the sum of pounds of lawful money of Great Britain, and would permit and suffer the same to remain and continue in the said fold of the said A. Roodhouse from thence till the first day of May then next following, he the said Gosnay then and there, to wit, on the day and year first above mentioned, at Wakefield aforesaid, in the county aforesaid, undertook, and faithfully promised the said A. Roodhouse to pay to him the said sum of money for the same on the first day of January then next ensuing: And the said A. Roodhouse in fact says, that although he, confiding in the said promise and undertaking of the said B. Gosnay, did then and there, to wit, on the day and year first above mentioned, to wit, at Wakefield aforesaid, in the county aforesaid, sell to the said A. Roodhouse the said stack of hay upon the terms aforesaid; and although he the said A. Roodhouse did accordingly permit and suffer the said stack of hay to remain and continue in the said fold until the said B. Gosnay, since the making of the said promise, took away a part thereof; and although the residue thereof still remains in the said fold of the said A. Roodhouse upon the terms aforesaid; and although the first day of January next after the making of the said promise is long since elapsed: Yet the said B. Gosnay, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said A. Roodhouse in this behalf, did not, on the said first day of January, pay, nor hath he as yet paid, the said pounds, or any part thereof, to the said A. Roodhouse (although he the said B. Gosnay afterwards, to wit, on the said first day of January, and often afterwards, to wit, at Wakefield aforesaid, in the county aforesaid, was requested by the said A. Roodhouse); but he so to do hath hitherto wholly refused, and still refuses. (Add Counts for hay and other goods, &c. sold and delivered; and *quantum meruit*; ditto bargained and sold; use and occupation; money had and received; account stated; and common conclusion there-to; pledges.)

T. BARROW.

Declaration in
C.B. in: slump-
nit against a per-
son for abusing
a horse, which
he had received
in the country
to bring to
plaintiff in town,

MIDDLESEX, to wit. William Fussey, late of Westminster, in the county of Middlesex, common carrier, was attached to answer William Reed in a plea of trespass on the case; and whereupon the said W. Reed, by A. B. his attorney complains, for that whereas heretofore, to wit, on the tenth day of January, A. D. 1790, to wit, at Westminster in the county of Middlesex, in considera-
tion

tion that the said William Reed, at the special instance and request of the said William Fussley, had then and there caused to be delivered to the said William Fussley a certain mare of the said William Reed of a great value, to wit, of the value of twenty pounds of lawful money of Great Britain, to be safely and securely conveyed, to wit, from Ely, in the county of Cambridge, to London, and there, to wit, at London aforesaid, to be safely delivered to the said William Reed, for a certain reasonable reward to be therefore paid to the said William Fussley, he the said William Fussley undertook, and then and there, to wit, at W. aforesaid, faithfully promised the said William Reed safely and securely to convey and deliver the said mare as aforesaid: And the said W. R. in fact saith, that although the said W. F. then and there, to wit, on the day and year aforesaid, at W. aforesaid, had and received the said mare to convey and deliver as aforesaid; and although the said W. F. did afterwards deliver the said mare for the said W. R. at London aforesaid: Yet the said W. F. not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said W. R. in this behalf, did not safely and securely convey the said mare according to his said promise and undertaking; but on the contrary thereof, in the said conducting and conveying of the said mare, took so little and such bad care thereof, and so much misused, fretted, and abused her upon that occasion, that the said mare, in consequence thereof, immediately sickened and soon afterwards died, and was wholly lost to the said W. R. to wit, at W. aforesaid, in the county aforesaid. *And whereas* afterwards, to-wit, on the day and year aforesaid, at W. aforesaid, in the county aforesaid, in consideration that the said W. R. at the like special instance and request of the said W. F. had then and there caused to be delivered to the said W. F. a certain other mare of him the said W. R. of a large value, to wit, of the value of twenty pounds of like lawful money, to be safely and securely conveyed, to wit, from Ely aforesaid to a certain place *called the Catherine and Wheel, in a certain street called Bishopsgate-street, in the said county of Middlesex*, and there to be safely and securely delivered for the said W. R. for a certain reasonable reward to be therefore paid to the said W. F. he the said W. F. undertook, and then and there, to wit, at W. aforesaid, faithfully promised the said W. R. safely and securely to convey and deliver the said last mentioned mare as aforesaid: And the said W. R. in fact says, that although the said W. F. then and there, to wit, at W. aforesaid, had and received the said last mentioned mare to convey and deliver as aforesaid: Yet the said W. F. not regarding his said last mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said W. R. in this behalf, did not safely and securely convey and deliver the said last mentioned mare, according to his said last mentioned promise and undertaking; but on the contrary thereof, after he the said W. F. had received the same for the purpose aforesaid, took so little and such bad care of the said last mentioned

mentioned mare in the conducting and conveying her, and so much misused, fretted, and abused her upon that occasion, that the said last mentioned mare, in consequence thereof, immediately sickened and soon afterwards died, and thereby became and is wholly lost to the said W. R. to wit, at Westminster aforesaid. (Add Counts for money had and received; money laid out; account stated; and common conclusion thereto.)

T. BARROW.

See Carriers by Land—Negligence—Misfeasance.

Declaration in
assumpsit for
deceit in the sale
of an unsound
horse warranted
at a sound price.
1st Count ex-
ecutory.

2d Count exe-
cuted.

FOR that whereas, on day of A. D. at, &c. in consideration that the said plaintiff *would* buy of the said defendant, at his special instance and request, a certain horse at and for a certain large sum of money, to wit, the sum of pounds, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that the said horse was sound: And the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of the said defendant, afterwards, to wit; on, &c. at, &c. aforesaid, did buy the said horse of and from the said defendant at and for the said price or sum of money: Yet the said defendant, contriving and fraudulently intending craftily and subtilly to injure the said plaintiff in this behalf, did not regard his said promise and undertaking, but thereby craftily and subtilly *deceived* the said plaintiff in this, that the said horse, at the time of the making the said promise and undertaking, and also at the time of the aforesaid sale thereof, was not sound, but was then and there unsound; and by reason thereof the said horse became and was of no use or value to the said plaintiff, to wit, at, &c. aforesaid. And whereas afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, *had* then and there bought of the said defendant a certain other horse, and *had then and there paid to the said defendant a certain other large sum of money, to wit, another sum of thirty pounds for the same*, he the said defendant undertook, and then and there faithfully promised the said plaintiff that the said last mentioned horse was sound: Yet the said defendant, contriving, &c. in this behalf, did not regard his said last mentioned promise and undertaking, but thereby craftily deceived the said plaintiff in this, that the said last mentioned horse, at the time of the making of the said last mentioned promise and undertaking, and also at the time of the making the aforesaid sale thereof, was not sound, but was then and there unsound; and by reason thereof the said last mentioned horse became and was of no use or value to the said plaintiff, to wit, at, &c. aforesaid. (3d Count like the 2d, omitting what is in italic; money had and received; common conclusion.)

F. BULLER.

In a similar case (*Stuart v. Wilkins*, Doug. 18.) reserved from assizes, the evidence being of an express warranty, on motion for a nonsuit to be entered,

the Court of K.B. preferred this declaration to declaring on the warranty. See *Horne's Pleader*, fo. 77. a Declaration in Warranty.

SOMERSET.

SOMERSET, ff. William Dare complains of James Bryant, being in the custody of the marshal, &c. for that whereas the said W. Dare, on the eleventh day of October in the year of Our Lord 1740, at Taunton, in the county aforesaid, had bargained with the said J. B. to buy of him the said J. B. divers, to wit, one hundred and thirty sheep; and the said J. B. then and there, well knowing the said sheep to be scabbed and rotten, then and there, by warranting the said sheep to be sound, then and there falsely, deceitfully, and fraudulently sold the said sheep to the said W. Dare for a great sum of money, to wit, for seventy nine pounds, whereas in truth and in fact the said sheep were scabbed and rotten, and always afterwards so there remained; and thus the said James Bryant, on the day and year aforesaid, at T. aforesaid, falsely and fraudulently deceived the said William Dare. And whereas the said William Dare afterwards, to wit, on the same day and year aforesaid, at Taunton aforesaid, had bargained with the said James Bryant to buy of him the said J. B. divers, to wit, one hundred and thirty other sheep; and the said J. B. then and there, well knowing the said last mentioned sheep to be then baned, scabbed, and rotten, on the same day and year, at Taunton aforesaid, by warranting the said last mentioned sheep to be sound in wind and limb, fraudulently and deceitfully sold the said last mentioned sheep to the said William Dare for a large sum of money, to wit, for another sum of seventy nine pounds, whereas in truth and in fact the said last mentioned sheep were then baned, scabbed, and rotten, and divers, to wit, sixty of the said sheep, have since died so distempered; of which the said J. B. afterwards, &c. had notice; and thus the said James B. on the day and year aforesaid, at Taunton aforesaid, falsely and fraudulently deceived the said W. Dare, whereby the said W. Dare saith that he is injured to the value of eighty pounds. And therefore he brings this suit, &c.

Declaration on
sale of rotten
sheep on a
warranty.

2d Count.

Drawn by MR. WARREN.

SUSSEX, to wit. Walter Payne, late of Petworth in the county of Suff: x aforesaid, victualler, was attached to answer George Brier of a plea of trespass upon the case, &c. And thereupon the said George, by John Wickliffe his attorney, complains, that whereas the said George, on the second day of January in the year of Our Lord 1738, at Petworth aforesaid in the county aforesaid, bargained with the said Walter to buy of the said Walter a certain gelding of the said Walter; and the said Walter, knowing the said gelding to be infirm, unsound, and infected with a certain distemper called the glanders, by then and there warranting the said gelding to be sound and free from any distemper whatsoever, then and there deceitfully sold the said gelding to the said George for the sum of ten pounds ten shillings of lawful money of Great Britain, and one cord of wood, which said cord of wood was then and there of the value of twelve shillings of like lawful money; which said gelding, at the time of the sale thereof,

Declaration on
the sale of
gelding on
warranty.

ad Count.

thereof, and from that time to the death of the said gelding, was infirm, unsound, and infected with the said distemper called the glanders; and so the said Walter, on the same day and year aforesaid, at P. aforesaid, falsely and deceitfully deceived the said George. And whereas the said George, on the said second day of January in the year aforesaid, at Petworth aforesaid, bargained with the said Walter to buy of the said Walter a certain other gelding of the said Walter; and he the said George then and there knowing the said last-mentioned gelding to be infirm, unsound, and infected with the said distemper called the glanders, by then and there warranting the said last-mentioned gelding to be sound in wind and limb, and without any infirmity whatsoever, then and there deceitfully sold the said last mentioned gelding to the said George for a large sum of money, to wit, for the sum of eleven pounds two shillings of like lawful money; which said last-mentioned gelding, at the time of the sale thereof, was, and from that time to the time of the death of the said gelding continued infirm, unsound, and infected with the said distemper called the glanders as aforesaid, to wit, at P. aforesaid; and so the said Walter, on the same day and year aforesaid, at P. aforesaid, falsely and deceitfully deceived the said George, to the said George his damage of forty pounds. And therefore he brings this suit, &c.

Drawn by MR. WARREN.

ASSUMPSIT SPECIAL; 1st, For not ACCEPTING, RE-DELIVERING, or TAKING BACK, &c. GOODS, CATTLE, &c. BOUGHT; 2d, For DECEIT in the DELIVERY, and on WARRANTY; 3d, Concerning GOODS, &c. LENT and LET to HIRE (*inter alia* of BAILMENT,) against BAILEES for various Purposes.

Declaration in C. B. on agreement to make a parcel of buckles according to sample, and if not so good to take them back and return the money, or goods of as good a quality as the sample.

Breach, that goods were not so good, and defendant refused to take them back, &c.

STAFFORDSHIRE, *ff.* D. C. late of, &c. was attached to answer, &c. &c.; that whereas the said plaintiff, long before and at the time of the making of the agreement hereafter mentioned, was and still is an ironmonger, and the business of an ironmonger, during all that time, used and exercised, to wit, at &c. aforesaid; and the said plaintiff was, during all that term, used to sell buckles in the way of his trade by wholesale, traders trading with him and sending to him for such goods, and which said goods were usually bespoke, made, and sold according to the pattern or sample buckles; and the said defendant long before, and at the time of the making of the agreement hereinafter next mentioned, was and still is a buckle-maker, and the business of a buckle-maker during all that time used and exercised, to wit, at, &c. aforesaid; and the said plaintiff and defendant, so respectively using and exercising the said respective trades in manner aforesaid, on the first day of

of August 1740, at, &c. aforesaid, it was agreed by and between the said plaintiff and the said defendant, that the said plaintiff should employ the said defendant in his business of a buckle-maker, to make buckles according to and of equal goodness with such pattern or sample buckles as the same should be from time to time bespoke by plaintiff; and that if any such buckles, which said defendant should so make for the said plaintiff, should at any time be not so good or as well made as the sample or pattern buckles by which they should be so bespoke, and, being sent to any of the said plaintiff's correspondents, should be for that reason returned back to the said plaintiff, then the said defendant should take back all such buckles so returned from the said plaintiff, and repay him the price which he the said defendant should have received for the same of the said plaintiff, or make him other good work of the value of such money instead thereof, at the election of the said plaintiff. And the said agreement being so made (Mutual promises) And the said plaintiff in fact saith, that in pursuance of the said agreement, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, the said plaintiff employed the said defendant to make for the said plaintiff in the way of his trade, a certain large parcel of buckles, to be made according to certain sample or pattern buckles then in the hands and custody of the said plaintiff, and which said buckles, when made, were to be sent up to London by the said plaintiff to a certain correspondent of the said plaintiff who bespoke the same, to be made by those sample or pattern buckles, and of equal goodness with those sample or pattern buckles; whereof the said defendant then and there, to wit, on the same, &c. at, &c. aforesaid, had notice. And the said plaintiff further saith, that the said defendant did afterwards, to wit, on the fourth day of September in the year aforesaid, at, &c. aforesaid, make for and deliver unto the said plaintiff the said parcel of buckles; and the said plaintiff then and there paid to the said defendant his own price, to wit, three pounds nine shillings for the same; and that the said buckles so delivered were not then and there according to the sample or pattern buckles by which the same was so bespoke aforesaid, but of a much inferior goodness in make and finishing: and the said plaintiff afterwards, to wit, on the same day and year last aforesaid, sent the same up to London to his correspondent there, who had bespoke the same (a), and the same was returned back again to the said plaintiff by that correspondent, because the same were not made according to the said pattern or sample buckles, but of a much inferior goodness in make and finishing; of all which premises the said defendant afterwards, on the fourth day of September in the year aforesaid, at, &c. aforesaid, had notice, and was then and there requested by the said plaintiff to take back the said buckles, and to repay the said plaintiff the said three pounds nine shillings so received of the said plaintiff by the

(a) Something omitted in the original draft.

agreement
mutual prom
and year ago
ment being the
to make a
of the said plaintiff
to perform a full
the agreement
all things, there
contained in bu
past & behalfs be
performed, and
on course of of
the said plaintiff
unattended & fulfilled
to perform a full
the agreement
all things, there
contained in bu
past and beha
of the said plaintiff
to perform a full
fulfilled

performance
on the part of
pet.
neglect on the
part of Dk.

said defendant for the same : Yet the said defendant, not regarding his aforesaid promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, he the said defendant did not then, or at any other time afterwards hitherto, take back the said buckles, or any part of them, or repay to said plaintiff the said three pounds nine shillings which the said defendant had so received from the said plaintiff for the same, or any part thereof, (although to do this said defendant afterwards, to wit, on the same day and year last aforesaid, and often afterwards, at, &c. aforesaid, was requested by the said plaintiff,) but he to do this hath hitherto wholly refused, and still refuses. (2d Count like the first, only that defendant was requested to take back the buckles, and to make other good work of the value of the said three pounds nine shillings so received by the said defendant of the said plaintiff for the said buckles ; 3d Count, the defendant was requested to take back his buckles, and either to repay the money or to make other work, at defendant's election ; breach, that he did neither ; 4th Count, goods sold ; and 5th Count, money laid out, had, and received ; and common conclusion.)

Declaration in B.R. in assumpsit by a watchmaker for the price of a gold watch made for defendant according to order, but not accepted.

SOMERSETSHIRE, // John Ford complains of Thomas Balme, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c. for that whereas heretofore, to wit, on the second day of June in the year of Our Lord 1790, at Bath in the said county of Somerset, in consideration that the said John, who was then and there a watchmaker, at the special instance and request of the said Thomas, would make for the said Thomas a certain watch of a large value, to wit, of the value of eighteen pounds eighteen shillings of lawful money of Great Britain, he the said Thomas then and there undertook, and faithfully promised the said John to pay him for the said watch the sum of eighteen pounds eighteen shillings upon delivery thereof to him the said John : And the said John avers, that he the said John, confiding in the said promise and undertaking of the said Thomas, afterwards, to wit, on the day and year aforesaid, at Bath aforesaid, in the county aforesaid, made and finished the said watch for the said Thomas for the price aforesaid, and the same, so made and finished, then and there tendered to the said Thomas, and then and there requested and required the said Thomas to pay him the sum of eighteen pounds eighteen shillings for the same : Yet the said Thomas, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, did not, when the said watch was so tendered to him as aforesaid, receive or accept the same ; nor did nor would he the said Thomas, when he was so requested to pay the said eighteen pounds eighteen shillings for the same as aforesaid, pay the same,

or any part thereof, to the said John, but he so to do hath hitherto wholly refused, and still refuses. (2d and 3d Count, a watch bargained and sold, and *quantum meruit*; 4th and 5th, work and labour as a watchmaker; and common money Counts.)

LANCASHIRE; *ff.* George Illingsworth complains of James Clegg, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case; for that whereas the said George, on the sixteenth day of June in the year of Our Lord 1788, at Lancaster in the county of Lancaster, at the special instance and request of the said James, bought of the said James fifteen Scotch calves at the rate and price of thirteen shillings and sixpence for each and every of the said calves, to be paid to the said James on delivery thereof, and then and there undertook, and faithfully promised the said James to pay to him the sum of thirteen shillings and sixpence for each and every of the said calves on delivery thereof as aforesaid; and, in consideration thereof, he the said James then and there undertook, and faithfully promised the said George to deliver to him the said George the said fifteen Scotch calves in manner following, that is to say, two of the said calves in each of the said first six weeks, and the remaining three of the said calves on the seventh week next ensuing the said sale thereof. And the said George in fact says, that although the said James afterwards, in the first week after the said sale, to wit, on the nineteenth day of the said month of June, delivered to the said George two of the said calves, and afterwards, in the second week after the said sale, to wit, on the twenty-seventh day of the said month of June, delivered one other of the said calves according to and in part performance of his said promise and undertaking, which he the said George paid for according to the rate and price aforesaid, on delivery; and although the said seven weeks from the said sale of the said calves, and wherein the said James, if he had thought fit so to do, ought to, could, and might have delivered the residue of the said calves to him the said George, have long since elapsed; and although the said George, within the said seven weeks from the said sale, duly tendered himself, and offered to receive of the said James, and then and there required the said James to deliver to the said George the rest of the said calves, according to the said promise and undertaking of the said James, and then and there tendered and offered to pay to the said James the sum of thirteen shillings and sixpence for each and every of such residue of the said calves, if he the said James would deliver the same as aforesaid; and although the said George hath always from thence hitherto been ready and willing to receive the residue of the said calves of the said James, and to pay him for the same at the rate and price aforesaid, to wit, at Lancaster aforesaid in the county aforesaid: Yet the said George avers, that the said James, not regarding his said promises and undertakings so by him made as aforesaid, with

Declaration for fifteen calves sold to be delivered two each succeeding week, and three the last, and to be paid for on delivery. Defendant delivered part, but refused to deliver the remainder.

regard to the residue of the said calves, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this behalf, did not, when he the said James was so requested as aforesaid to deliver to the said George the residue of the said calves, according to his promise and undertaking so by him in that behalf made as aforesaid, deliver, nor hath he as yet delivered or caused to be delivered the residue of the said calves to the said George, but he so to do then and there wholly refused, and from thence hitherto hath refused, and still doth refuse, to wit, at Lancaster aforesaid in the county aforesaid. (2d Count, stating the promise to be to deliver the whole within seven weeks, and omitting the word Scotch; 3d Count, to deliver them on reasonable request; 4th Count, for money had and received; and common conclusion.)

T. BARROW.

SURRY, ff. John Biddle, George Thackeray, and Thomas Merrick complain of John Field and John Shephard Daniel, being, &c.; for that whereas, before the making of the promise and undertaking of the said defendants hereafter next mentioned, to wit, on the first day of October A. D. 1756, and for a long time afterwards, the said J. F. was possessed of a certain barge, in which barge he the said J. F. was used and accustomed to carry goods and merchandizes by water for hire and freight from London and other places thereto adjacent, to Chertsey and other places near and adjacent to Chertsey, and other places near and adjacent thereto; and the said J. F. being so possessed of the said barge, they the said plaintiffs had, before the making of the said promise and undertaking of the said defendant hereafter mentioned, retained and employed the said J. F. to carry and convey in his said barge, for freight and hire to be therefore paid to the said J. F. divers goods and merchandizes, to wit, thirty bags, called pockets, of hops, of the said plaintiffs, of the value of one hundred and fifty pounds four shillings and sixpence, and which had cost the plaintiffs one hundred and fifty pounds four shillings and sixpence, from a certain wharf of the said J. M. situate, lying, and being in the parish of St. Saviour, Southwark, in the county of Surry aforesaid, near London aforesaid, to Chertsey aforesaid, and had accordingly caused the said thirty pockets of hops to be delivered to the said J. F. for the carriage aforesaid, and the said J. F. had loaded and put the same on board the said barge, and had departed with the said barge; and the said thirty pockets of hops so laden and being on board the said barge from the said wharf towards Chertsey aforesaid, and the said barge proceeding in her said voyage from the said wharf to Chertsey aforesaid, had sunk in her said voyage, to wit, on the sixth day of October in the year aforesaid, in the river Thames, between the said wharf and Chertsey aforesaid, whereby the said thirty pockets of hops had been spilt and sunk in the same river, and were greatly damaged, wetted and spoiled: and the said plaintiffs had been, at the time of the making of the promise and

(A) Declaration in B. R. on a special agreement One of defendants as a barge-master had been employed by plaintiffs to carry thirty pockets of hops, which he sunk. Plaintiffs, at great expence to recover same, greatly damaged, sold a part, and brought an action against barge-master for their damages: defendants agreed to take the remainder of the hops, and pay plaintiffs prime cost for the same, and all expences, they agreeing to lose each 18l. and allowing the money received for those sold; the hops to be delivered at a particular place; they were accordingly sent, but defendant refused to pay.

(a) See Carriers by Water, *post*.

under-

undertaking of the said defendants hereafter mentioned, at great charges and expences at taking or weighing up the said hops so spilt and sunk as aforesaid, and in the carriage of the same from the place where these were so sunk and spilt, to the said wharf, and in drying the same, and in providing other bags for the same; and had afterwards sold part, to wit, seventeen hundred one quarter and five pounds weight of the said hops so damaged as aforesaid. And in order to recover their damages by them sustained on occasion of the premises as aforesaid, against the said J. F. they the said plaintiffs, before the making, &c. to wit, in Michaelmas Term now last past, had sued and prosecuted out of the court of our lord the now king, before the king himself, the said court then and still being held at Westminster in the county of Middlesex, a certain writ of our said lord the king, called a *latitat*, directed to the then sheriff of Surry, whereby the said sheriff was commanded that he should take the said J. F. if he should be found in his bailiwick, and safely keep him, so that he might have his body before our lord the now king at Westminster, on, &c. then next following, to answer unto the said plaintiffs in a plea of trespass; and the said J. F. before the making of, &c. hereafter next mentioned, had been duly served with a copy of the said writ, according to the form of the statute in such case made and provided; of all which said premises the said defendants afterwards, and before the making, &c. to wit, on the fifth day of January 1757, at, &c. aforesaid, had notice. And thereupon afterwards, to wit, on the fifth day of January 1757 aforesaid, at, &c. aforesaid, for the settling and adjusting the said suit at law, and all other the premises aforesaid, it was agreed by and between the said plaintiffs and the said defendants, that each of them the said plaintiffs should lose the sum of eighteen pounds, in the whole amounting to fifty-four pounds out of the prime cost of the said hops, and the charges and expences aforesaid; and that the said plaintiffs should send as soon as possible all such of said hops as then remained unfold to the house of William Coffin, situate in the borough of Southwark in the county of Surry aforesaid, to the use of them the said defendants, or one of them; and that the said defendants should pay to the said plaintiffs the prime cost of the said hops, and the charges and expences aforesaid, and their costs at law in the said suit, after deducting thereout the said fifty-four pounds and the money raised by the same, and such part of the said hops as they had so sold, and the said payment should be made to the said plaintiffs on or before the thirty first of January aforesaid. And the said agreement being so made, they the said plaintiffs afterwards, to wit, on the said fifth of January in the year aforesaid (Mutual promises). And the said plaintiffs aver, that they the said plaintiffs afterwards, on the said fifth of January in the year last aforesaid, being as soon as possible after the making of the said agreement, did send all the said hops that, at the time of the making of the said agreement, remained unfold, to the said house of Mr. Coffin, to the use of the said defendants, or one of them, and that

the said costs and expences, which the said plaintiffs had expended and been put unto in and about the premises, to the time of making of the said agreement, including the said costs and charges of the said proceedings at law, amounted to a large sum of money, to wit, the sum of sixteen pounds seventeen shillings and a halfpenny, and that the prime cost of all the said hops amounted unto the said sum of one hundred and fifty pounds four shillings and sixpence; and that the said plaintiffs had raised by the same, and all such of the said hops which had been so sold before the making of the said agreement, the sum of fifty-six pounds four shillings and no more; which said several sums of one hundred and fifty pounds four shillings and sixpence and sixteen pounds seventeen shillings and a halfpenny in the whole amounted to the sum of one hundred and sixty-seven pounds one shilling and sixpence halfpenny; of all which said premises the said defendants afterwards, to wit, on the said fifth day of January A. D. 1757 aforesaid, at Southwark aforesaid, had notice: Yet the said defendants, not regarding, &c. but contriving, &c. have not, nor hath either of them, on or before the twenty-first day of January now last past, or at any other time hitherto, paid to the said plaintiffs, or to any of them, the sum of one hundred and fifty-six pounds seventeen shillings and sixpence halfpenny, being the amount of the prime cost of the said hops, and of the costs, charges, and expences aforesaid, after deducting of the said fifty-four pounds so lost by the said plaintiffs as aforesaid, and of the said money so raised by the sale of the said hops that had been, at the time of the making of the said agreement, so sold as aforesaid, or any part thereof (although to pay the same they the said defendants afterwards, to wit, on the thirty-first day of January in the year last aforesaid, and often afterwards, at, &c. aforesaid, were requested by the said plaintiffs); but they to pay the same to the said plaintiffs, or any or either of them, have, and each of them hath, hitherto wholly refused, and still doth refuse. (Add two Counts more for goods sold and delivered, &c.; money had and received, &c.; and common conclusion to those three Counts.)

Declaration on a special agreement, for not *facting away* remainder of brewing utensils which defendant had bought of plaintiff.

DECLARATION states, That whereas the said plaintiff, on the third day of May A. D. 1777, at Westminster in the county of Middlesex, was lawfully possessed of a certain quantity of vessels made of wood, to wit, two vats, twenty-three butts, thirty-six puncheons, fourteen hogheads, forty-four barrels, ten half-hogheads, thirty-nine kilderkins, seventy-seven firkins, and sixteen pinns, and one tub called a starting-tub, with a certain leather pipe and certain screws thereto belonging; and being so thereof possessed, he the said plaintiff, on the same day and year, at Westminster aforesaid, at the special instance and request of the said defendant, sold to the said defendant, and the said defendant bought of the said plaintiff, all and singular the said vats, butts, puncheons, hogheads, barrels, half hogheads, kilderkins,

derkins, firkins, and pinns, with the said starting-tub, with the said pipe and screws thereto belonging, at the several and respective rates following, to wit, two vats at the rate or price of two pounds ten shillings, the aforesaid twenty-three butts, thirty-six puncheons, and fourteen hogheads, at and after the rate or price of eight shillings for each and every of the said butts, puncheons, and hogheads; the aforesaid forty-four barrels, and the aforesaid ten half-hogheads, at and after the rate or price of two shillings for each and every of the said barrels and half-hogheads, and two pence for each and every iron-hoop with which the same barrels and half hogheads were at the time of the sale thereof respectively hooped, fastened, and bound; the aforesaid thirty-nine kilderkins at and after the rate or price of one shilling for each and every of the said kilderkins, and two-pence for each and every iron-hoop with which the same kilderkins were at the time of the said sale thereof hooped, fastened, and bound; the aforesaid seventy-seven firkins at and after the rate or price of ten-pence for each and every of the said firkins, and two-pence for each and every iron-hoop with which the same firkins were at the time of the sale thereof respectively hooped, fastened, and bound; and the aforesaid sixteen pinns at and after the rate or price of six-pence for each and every of the said pinns; and starting-tub with the said pipe and screws thereto belonging at the rate or price of one pound one shilling, to be therefore paid by the said defendant to the said plaintiff for the same respectively; and the said defendant then and there paid to the said plaintiff the sum of ten shillings and six-pence as earnest and in part payment of the aforesaid several and respective rates or prices to be by him the said defendant paid to the said plaintiff in manner and for the purpose aforesaid: and it was then and there agreed, by and between the said plaintiff and the said defendant, that the said plaintiff should deliver to the said defendant all and every the said vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipe and screws thereto belonging, whensoever he the said defendant should, by the Thursday sevensnight then next following, being the twelfth day of May A. D. 1757 aforesaid, come to a certain dwelling-house and brewing-house of him the said plaintiff, situate and being at Kensington in the county of Middlesex aforesaid, where the same then were, to fetch, take, and accept of and from the said plaintiff, and to carry the same; and that the said defendant should accordingly, within the aforesaid time for that purpose limited and appointed, come to fetch, take, and accept the same of and from the said plaintiff at his the said plaintiff's said house and brewhouse, and carry away the same at his the said defendant's own expence; and that the said defendant should, on the delivery of the aforesaid vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and of the said starting-tub with the said pipe and screws thereto belonging, by the said plaintiff to him the said defendant in manner

aforesaid, pay to the said plaintiff the residue of the aforesaid several and respective rates or prices so by him the said defendant to be paid to the said plaintiff for the same. And the said agreement being so made on the said third day of May, the said plaintiff and the said defendant (Mutual promises). And the said plaintiff avers, that the number of iron hoops with which the aforesaid barrels and half hogheads were at the time of the making of the said agreement hooped, fastened, and bound, amounted in the whole to one hundred and forty, and that the number of iron hoops with which the aforesaid kilderkins were at the time of the making of the above-mentioned agreement hooped, fastened, and bound, amounted in the whole to one hundred and thirty; and that the aforesaid firkins were not, nor were any of them, at the time of the making of the above-mentioned agreement, hooped, fastened, or bound, with any iron hoops whatsoever, to wit, at Westminster aforesaid. And the said plaintiff further says, that the aforesaid several and respective rates or prices above mentioned and agreed by and between the said plaintiff and the said defendant to be by the said defendant paid to the said plaintiff for the aforesaid several and respective vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the pipe and screws thereto belonging, according to the said agreement, amounted in the whole to forty six pounds thirteen shillings; of all which premises the said defendant afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, of and from the said plaintiff had notice. And the said plaintiff further says, that although he the said plaintiff always from the time of the making of the said agreement until the Thursday sevensnight then next following, being the time limited and appointed by the said agreement for the said defendant to come for, fetch, take, accept, and carry away the same vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipe and screws thereto belonging, at his the said plaintiff's aforesaid house and brewhouse at Kensington aforesaid, was ready and willing, and often during that time offered to deliver to him the said defendant all and every the said vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipes and screws thereto belonging, at his the said plaintiff's said house and brewhouse, and was, during all the time aforesaid, ready and willing, and often during that time offered to permit and suffer him the said defendant to fetch, take, accept, and carry away the same at and from the said house and brewhouse of him the said plaintiff; and although the said defendant afterwards, and within the time for that purpose limited and appointed, to wit, on the sixth day of May, in the year aforesaid, at Westminster, did accordingly come for, fetch, take, accept, and carry away, to wit, at and from the said house and brewhouse of the said plaintiff, a part of the said vessels abovementioned to be made of wood, and to be by the said plaintiff sold to the said defendant, and by the said defendant bought of the

the said plaintiff, to wit, one vat, twenty-two butts, twenty-one puncheons, fourteen hogheads, forty-four barrels, ten half-hogheads, twenty-two kilderkins, seventy-seven firkins, and sixteen pinns; and although he the said plaintiff afterwards, and within the time by the said agreement for that purpose limited and appointed, to wit, on the same day and year last aforesaid, and often afterwards during the said time above by the said agreement for that purpose limited and appointed, at Westminster aforesaid, required the said defendant to come for, fetch, take, accept, and carry away, at and from the said house and brew-house of the said plaintiff, the residue of the aforesaid vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and also the said starting-tub with the said pipe and the said screws thereto belonging, and to pay to him the said plaintiff the aforesaid residue of the aforesaid several and respective rates or prices to be by him the said defendant paid to the said plaintiff for all the aforesaid vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipe and screws thereto belonging, according to the form and effect of the above-mentioned agreement; and of the aforesaid promise and undertaking of the said defendant so by him made in this behalf as aforesaid; Yet the said defendant, not regarding his aforesaid promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not at any time within the said time by the said agreement limited and appointed for him the said defendant to come for, fetch, take, accept, and carry away all and every the aforesaid vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipe and the said screws thereto belonging, so by him the said plaintiff sold to the said defendant, and by the said defendant bought of the said plaintiff, at and from the said house and brew-house of the said plaintiff, to wit, by the said Thursday sevensnight next ensuing the making of the said agreement, being the said twelfth day of May A. D. 1757, or at any other time whatsoever hitherto come for, or hath he fetched, taken, accepted, or carried away the said residue of the aforesaid vats, butts, puncheons, hogheads, barrels, half-hogheads, kilderkins, firkins, and pinns, and the said starting-tub with the said pipe and the said screws thereto belonging, or any part of that residue; nor hath he at any time hitherto paid to the said plaintiff the aforesaid residue of the said several and respective rates or prices so by the said defendant to be paid to the said plaintiff in manner and for the purpose aforesaid, or any part thereof, but he the said defendant to perform or fulfil his aforesaid promise and undertaking so by him made in this behalf as aforesaid, hath hitherto wholly refused, and still doth refuse, so to do. (Two Counts, goods bargained and sold, and *quantum meruit*; two Counts for goods sold and delivered; money laid out; money had and

and received; and common conclusion to six last Counts. Damages, one hundred pounds.)

Declaration on
an agreement to
deliver cows

MIDDLESEX. John Salmon complains of Daniel Symonds, being in the custody of the marshal, &c.; for that whereas he the said John, on the twenty-ninth day of January in the year of Our Lord 1741, at Westminster, in the county of Middlesex, at the special instance and request of the said Daniel, bought of the said Daniel two cows of him the said Daniel at and for a certain rate and price, to wit, for the sum of fourteen pounds five shillings of lawful money of Great Britain, whereof he the said John then and there in hand paid to the said Daniel one shilling; and in consideration thereof, he the said Daniel afterwards, to wit, on the same day and year, at Westminster aforesaid, in the county aforesaid, assumed upon himself, and then and there faithfully promised the said John, that he would deliver the said two cows to the said John on the then next day at and for the rate and price aforesaid. And whereas also he the said John, on the said twenty-ninth day of January, in the year aforesaid, at Westminster aforesaid, in the county aforesaid, at the like special instance and request of the said Daniel, had bought of the said Daniel two other cows of him the said Daniel at and for a certain rate and price, to wit, for the sum of fourteen pounds fifteen shillings of like lawful money of Great Britain, whereof he the said John then and there in hand paid to the said Daniel the sum of twenty-nine shillings; and in consideration thereof, he the said Daniel afterwards, to wit, on the same day and year, &c. assumed upon himself, and then and there faithfully promised the said John, that he the said Daniel would deliver the said last-mentioned cows to the said John on the then next day, at and for the rate and price aforesaid. And although he the said John was, on the morrow of the said twenty-ninth day of January, in the year aforesaid, &c. ready to accept and take the said cows so sold to him as aforesaid, at the rate and price, and then and there was ready and willing, and offered to pay the residue of the said rate and price thereof to the said Daniel, and then and there requested the said Daniel to deliver to him the said several cows, according to the form and effect of the said several promises and undertakings of the said Daniel: Yet the said Daniel, not regarding his said several promises and assumptions, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this respect, did not deliver to the said John the said cows, or any of them, but wholly neglected and refused to deliver the same to the said John; by reason whereof the said John is very much prejudiced and hindered in the use and exercise of his trade of a butcher. And whereas the said Daniel afterwards, to wit, on the same day and year, &c. was indebted to the said John in forty shillings of lawful money of Great Britain, for so much money before that time had and received by the said Daniel for the use of the said John; and being so indebted, &c.

Drawn by MR. HARCASTELE,
BEDFORDSHIRE.

BEDFORDSHIRE, *ff.* Thomas Cooch, late of Cope, in the said county, yeoman, was attached to answer John Barr of a plea of trespass on the case, &c. ; and whereupon the said Thomas, by A. B. his attorney, complains, that whereas, on the nineteenth day of September, in the year of Our Lord 1739, at Bedford, in the county aforesaid, it was agreed between the said John and Thomas in manner following, that is to say, that the said John should sell to the said Thomas ten loads of beans of the said John, which then lay in a certain heap in the shop of Thomas Nottingham, in Bedford aforesaid, at the rate and price of nine shillings and ninepence by the load for every load thereof, and that the said beans should be delivered to the said Thomas Cooch by the said Thomas Nottingham when he the said Thomas Cooch should send for or require the same to be delivered to him, and that the said Thomas Cooch should pay unto the said John for the same the rate or price aforesaid, at or upon the twenty-fifth day of December then next following ; and thereupon, in consideration of the said agreement, and also in consideration that the said John, at the special instance and request of the said Thomas Cooch, on the same day and year aforesaid, at Bedford aforesaid, had promised to the said Thomas Cooch to perform and fulfil the said agreement in all things on his part and behalf to be performed, he the said Thomas Cooch did then and there undertake, and to the said John faithfully promise, to perform the said agreement in all things on his part to be performed. And although the said Thomas, at the time of making the said agreement at B. aforesaid, paid to the same John one shilling in part of the rate or price aforesaid : Nevertheless the said Thomas Cooch, not regarding his said promise and undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not sent for the said beans, or any part thereof, nor hath required the same, or any part thereof, to be delivered to him, or hath taken the same away, or any part thereof, nor hath paid the residue of the said rate or price aforesaid, that is to say, four pounds sixteen shillings and sixpence, or any part thereof, although the said Thomas Cooch afterwards, to wit, on the same day and year first above mentioned, at Bedford aforesaid, was requested by the said John so to do ; and although the said T. Nottingham hath been, ever since the making of the said agreement hitherto, and yet is ready and willing to deliver the same beans to the said Thomas Cooch or his order, at his shop in Bedford aforesaid, when thereunto required, to wit, at Bedford aforesaid ; but the said Thomas Cooch to send for or take away the said beans, or any part thereof, or to pay the residue of the said rate or price to the said John, hath hitherto refused and neglected, and doth yet refuse.

For not sending away beans sold.

Mutual promise.

LONDON, *ff.* John Warren, late of the parish of St. George, near Hanover-square, in the county of Middlesex, auctioneer, was attached to answer John Barr of a plea of trespass on the case, &c. ; and whereupon the said John, by A. B. his attorney, complains, that whereas, on the nineteenth day of September, in the year of Our Lord 1739, at London, in the county aforesaid, it was agreed between the said John and Thomas in manner following, that is to say, that the said John should sell to the said Thomas ten loads of beans of the said John, which then lay in a certain heap in the shop of Thomas Nottingham, in Bedford aforesaid, at the rate and price of nine shillings and ninepence by the load for every load thereof, and that the said beans should be delivered to the said Thomas Cooch by the said Thomas Nottingham when he the said Thomas Cooch should send for or require the same to be delivered to him, and that the said Thomas Cooch should pay unto the said John for the same the rate or price aforesaid, at or upon the twenty-fifth day of December then next following ; and thereupon, in consideration of the said agreement, and also in consideration that the said John, at the special instance and request of the said Thomas Cooch, on the same day and year aforesaid, at Bedford aforesaid, had promised to the said Thomas Cooch to perform and fulfil the said agreement in all things on his part and behalf to be performed, he the said Thomas Cooch did then and there undertake, and to the said John faithfully promise, to perform the said agreement in all things on his part to be performed. And although the said Thomas, at the time of making the said agreement at B. aforesaid, paid to the same John one shilling in part of the rate or price aforesaid : Nevertheless the said Thomas Cooch, not regarding his said promise and undertaking so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John in this behalf, hath not sent for the said beans, or any part thereof, nor hath required the same, or any part thereof, to be delivered to him, or hath taken the same away, or any part thereof, nor hath paid the residue of the said rate or price aforesaid, that is to say, four pounds sixteen shillings and sixpence, or any part thereof, although the said Thomas Cooch afterwards, to wit, on the same day and year first above mentioned, at Bedford aforesaid, was requested by the said John so to do ; and although the said T. Nottingham hath been, ever since the making of the said agreement hitherto, and yet is ready and willing to deliver the same beans to the said Thomas Cooch or his order, at his shop in Bedford aforesaid, when thereunto required, to wit, at Bedford aforesaid ; but the said Thomas Cooch to send for or take away the said beans, or any part thereof, or to pay the residue of the said rate or price to the said John, hath hitherto refused and neglected, and doth yet refuse.

For a deceit in delivering an imitation of a

topaz for a real one, and a mock china standish for a real one.

attached

attached to answer Richard Gibson of a plea of trespass upon the case, &c.; and whereupon the said Richard, by Hugh Price his attorney, complains, that whereas the said John, on the eighteenth day of October, in the twenty-fourth year, &c. at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, in consideration that the said Richard, at the special instance and request of the said John, had assumed upon himself, and to the said John then and there faithfully promised to pay to the said John the sum of twenty-six pounds five shillings and sixpence of lawful, &c. when he the said Richard should be afterwards thereunto requested, assumed upon himself, and to the said Richard then and there faithfully promised to deliver to the said Richard one oriental stone called a topaz, set in gold, of the value of twenty-six pounds five shillings and sixpence of like lawful money, when he the said John should be thereunto afterwards required: Yet the said John, not regarding his promise and undertaking aforesaid in form aforesaid made, but contriving and fraudulently intending the said Richard in this behalf to deceive and defraud, did not deliver to the said Richard one oriental stone called a topaz, set in gold, of the value of twenty-six pounds five shillings and sixpence of like lawful money (although so to do the said John afterwards, to wit, on the, &c. was by the said Richard required); but the said John instead thereof did, on the day, &c. in the year, &c. *deceitfully* and fraudulently deliver to the said Richard one false and counterfeit stone made in imitation of a topaz, of the value of three pounds of like lawful money, and no more, contrary to the form and effect of his promise and undertaking aforesaid. And whereas the said John afterwards, to wit, on the day, &c. in consideration that the said Richard, at the like instance and request of the said John, had assumed upon himself, and to the said John then and there faithfully promised to pay to the said John the sum of seven pounds seven shillings of like lawful money, when he the said Richard should be thereunto afterwards requested, assumed upon himself, and to the said Richard then and there faithfully promised to deliver to the said Richard one china enamelled standish of the value of seven pounds of like lawful money, when he the said John should be thereunto afterwards requested: Yet the said John, not regarding his promise and undertaking last mentioned, in form aforesaid made, but contriving and fraudulently intending the said Richard in this behalf with craft and subtilty to deceive and defraud, did not deliver to the said Richard one china enamelled standish of the value of seven pounds seven shillings of like lawful money (although so to do the said John afterwards, to wit, on the day, &c. in, &c. was by the said Richard required); but the said John instead thereof did, on the day and in the year aforesaid, at London, &c. *deceitfully* and fraudulently deliver to the said Richard one other enamelled standish, made in imitation of a china enamelled standish, of the value of eighteen shillings of like lawful money, and no more, contrary to the form and effect of his promise

2d Count for deceit in delivering for a china enamelled standish one made in imitation only.

mise and undertaking last mentioned. And whereas the said John afterwards, to wit, on the twentieth of October in the year of Our Lord 1751, at London, &c. was indebted to the said Richard in twenty-nine pounds fourteen shillings and sixpence of like lawful money, for so much money by the said John to the use of the said Richard before the time last-mentioned had and received; and being so thereupon indebted, the said John, in consideration thereof, afterwards, to wit, on the, &c. assumed upon himself, and to the said Richard then and there faithfully promised to pay to the said Patrick the said twenty-nine pounds fourteen shillings and sixpence, when he should be thereunto afterwards required: Yet the said John his promise and undertaking last mentioned, in form last aforesaid made, not regarding, but contriving and fraudulently intending the said Richard in this particular with craft and subtilty to deceive and defraud, the said twenty-nine pounds fourteen shillings and sixpence, or one penny thereof, to the said Richard hath not paid or satisfied (although the said John afterwards, to wit, on the day and in the year, &c. was by the said Richard so to do required); but the same to him to pay or satisfy hath altogether refused, and still doth refuse; whereupon he saith that he is the worse, and is damaged to the value of fifty pounds; and thereupon he bringeth suit, &c.

3d Count, in-
debitatus as-
sumpsit for mo-
ney had and re-
ceived.

And the aforesaid John, by Hugh William Pritchard his attorney, comes and defends the force and injury when, &c. and says, that he did not promise and undertake in such manner and form as the said Richard hath above complained against him; and of this he puts himself upon the country; and the said Richard doth so likewise: Therefore the sheriff is commanded that he cause to come here from twelve free and lawful men of the body of his county, each of whom to have ten pounds per year in lands, tenements, or rents, by whom the truth of the matter may be the better known, and who are in nowise related either to the said Richard or to the said John, to make a certain jury of the country between the parties aforesaid of the plea aforesaid, to recognize upon their oaths the full truth of the premises, because as well the said John as the said Richard, between whom the difference is, have put themselves upon that jury: The same day is given to the parties aforesaid at the same place, &c.

Plea, non assump-
sit.

Venire.

LONDON, to wit. James Henderson complains of William Willone, being, &c. in a plea of trespass on the case; for that, on the fifteenth day of October in the year of Our Lord 1788, at London, in the parish of St. Mary le Bow in the ward of Cheap, Declaration in
assumpsit for
deceit in the de-
livery of goods
sent to the East
Indies, pursuant to an order, which goods were accepted by defendant without the knowledge of the
nature and quality of the goods, which by the order were to be the best of different sorts, but some
were of an inferior quality, and some, through improper package, damaged, wherety plaintiff was
forced to sell at a less price, &c.

in

in consideration that the said James, at the special instance and request of the said William, would buy of the said William certain goods and merchandizes, consisting of cloths, ratteens, kerseymeres, and Manchester cottons, of various sorts, pursuant to a certain order in that behalf, to be sent to Bengal in the East Indies for the purpose of sale, then the said William undertook, and faithfully promised the said James to fulfil the said order with the best goods of the sundry sorts therein specified, all in such marketable condition as to reach Bengal aforesaid in a perfect saleable state, sea and ship hazard excepted; and the said James, confiding in the said promise and undertaking of the said William, he the said James, after the making of such promise and undertaking; to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, did buy such goods as aforesaid of and from the said William. And although the said William afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, did deliver unto and for the said James certain goods, packed as and for the goods specified in the said order, and as then and there being pursuant to the said order, and in fulfilment of the same, and the said goods were then and there accepted and received by the said James, he the said James not then knowing the true nature, quality, and condition of the same; and although such goods afterwards, and before the exhibiting of the bill of the said James, arrived at Bengal aforesaid, and were there unshipped and delivered; and although the same have been long since paid for by the said James, to wit, at London aforesaid, in the parish and ward aforesaid: Yet the said William did not regard his aforesaid promise and undertaking, but thereby craftily and subtilly deceived the said James in this, to wit, that the said William did not, by the said goods so by him shipped as aforesaid, or otherwise, fulfil the said order with the best goods of the sundry sorts therein specified, all in such marketable condition as to reach Bengal in a perfect saleable state, sea and ship hazard excepted, but omitted and neglected so to do, and therein failed and made default; and, on the contrary thereof, the said James saith, that the said goods, so delivered by the said William as aforesaid, were not, at the time of the aforesaid delivery, the best goods of the sundry sorts specified in the aforesaid order, nor were all the said goods then in such marketable condition as to reach Bengal in a perfect saleable state, sea and ship hazard excepted; but, on the contrary, a great part of the said goods, which had been and were so delivered by the said William as aforesaid as and for certain cloth commonly called ladies cloth, pursuant to the aforesaid order, were not goods of that denomination and species, but were goods of another and different sort and species, and of an inferior quality and value, and were unmarketable goods; and divers other large quantities of the said goods were also, at the time of the said delivery thereof, of an inferior quality and value than were so in that behalf ordered as aforesaid; and many of them were so old and decayed, and others of them were so damp, wet, and unseasoned,

and

and they were severally so loosely, carelessly, and improperly packed and covered, as not to reach Bengal aforesaid in a perfect saleable state, but by reason of such defect and imperfections in the same as aforesaid, and of such improper package and covering thereof as aforesaid, and not by or through any sea or ship hazard, reached Bengal aforesaid damp, spotted, stained, discoloured, rotten, moth-eaten, and in holes, and in various other respects damaged, and in an unsaleable and unmarketable state and condition, were unshipped and delivered, to wit, at London aforesaid, in the parish and ward aforesaid; whereby, and by reason of which said several premises, one Robert Stewart, who would otherwise have bought and taken the said several goods which so reached and arrived at Bengal in such unsaleable and unmarketable state and condition as aforesaid, at an advanced price, and upon certain very beneficial and advantageous terms in favour of the said James, refused to take or purchase them, and the said James was ultimately forced and obliged to sell and dispose of the same to other persons at and for a much less price or sum of money than they otherwise would and ought to have produced to him, and at a loss amounting in the whole to a large sum of money, to wit, the sum of one thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas, on the said fifteenth day of October in the year of Our Lord 1788, at London aforesaid, in the parish and ward aforesaid, in consideration that the said James, at the like request of the said William, had then and there bargained and agreed with the said William for the purchase of, and to pay him for certain other goods and merchandizes, consisting of cloths, ratteens, kerseymeres, and cottons of various sorts, pursuant to a certain order in that behalf, to be sent to Bengal in the East Indies for the purpose of sale there, i.e. the said William undertook, and faithfully promised the said James to fulfil the said last-mentioned order with the best goods of the sundry sorts therein specified, all in such marketable condition as to reach Bengal aforesaid in a perfect saleable state, sea and ship hazard excepted: And although certain goods were afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, shipped by the said William for Bengal aforesaid, as and for the goods specified in the said last-mentioned order, and in fulfilment of the same; and although such goods afterwards, and before the exhibiting of the bill of the said James, arrived at Bengal aforesaid, and were there unshipped and delivered; and although the same have been long since paid for by the said James, to wit, at London aforesaid in the parish and ward aforesaid: Yet the said James saith, that the said William did not regard his last-mentioned promise and undertaking, but thereby craftily and subtilly deceived the said James in this, to wit, that the said William did not, by the said goods so by him shipped as aforesaid, or otherwise, fulfil the said order with the best goods of the sundry sorts specified, all in such marketable condition as to reach Bengal in a perfect saleable state, sea and ship hazard excepted, but omitted and neglected so to do, and therein failed

2d Count, as
sumpsit to deli-
ver marketable
goods.

failed and made default; and, on the contrary thereof, the said James saith, that the said goods, so shipped by the said William as last aforesaid, were not, at the time of so shipping the same, the best goods of the sundry sorts specified in the said last-mentioned order, nor were all the said last-mentioned goods then in such marketable condition as to reach Bengal aforesaid in a perfect saleable state, sea and ship hazard excepted, but, on the contrary, a great part of the said goods, which had been and were shipped by the said William as last aforesaid, were, at the time of their being so shipped, of an inferior quality and value than were so in that behalf ordered as aforesaid, and many of them were so old, rotten, and decayed, and others of them were so damp, wet, and unseasoned, and they were severally so loosely, carelessly, and improperly packed and covered, as not to reach Bengal aforesaid in a perfect saleable state, but by reason of such defects and imperfections in the same as aforesaid, and of such improper package and covering thereof as aforesaid, and not by or through any sea or ship hazard, reached Bengal aforesaid spotted, stained, discoloured, rotten, torn, moth-eaten, and in holes, and in various other respects damaged and injured, and in an unsaleable and unmarketable state and condition, and in that state and condition were there respectively unshipped and delivered, to wit, at London aforesaid, in the parish and ward aforesaid; whereby, and by reason of which said several premises, one Robert Stewart, who would otherwise have bought and taken the said several goods which so reached and arrived at Bengal in such unsaleable and unmarketable state and condition as last aforesaid, at an advanced price, and upon certain very beneficial and advantageous terms in favour of the said James, refused to take and purchase them; and the said James was ultimately forced and obliged to sell and dispose of the same to other persons at and for a much less price or sum of money than they otherwise would and ought to have produced to him, and at a loss amounting in the whole to a large sum of money, to wit, the sum of one thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas on the said fifteenth day of October in the year of Our Lord 1788, at London aforesaid, in the parish and ward aforesaid, in consideration that the said James, at the like instance and request of the said William, had then and there bought, bargained, and agreed with the said William for certain other goods and merchandizes, consisting of cloth, ratteens, kerseymeres, and Manchester cottons of various sorts, to be sent to Bengal aforesaid in the East Indies for the purpose of sale, he the said William undertook, and then and there faithfully promised the said James to furnish and supply him with such goods as last aforesaid, and that the same should be packed up in a merchantlike manner, and in such marketable condition as to reach Bengal aforesaid in a perfect saleable state, sea and ship hazard excepted; and although certain goods were afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, shipped by the said William for Bengal aforesaid, as and for

3d Count states,
th. t. goods were
to be packed up
in a merchant-
like manner,
and to arrive,
&c.

for the said goods so bought and bargained for by the said James as last aforesaid; and although such goods afterwards, and before the exhibiting of the bill of the said James, arrived at Bengal aforesaid, and were then unshipped and delivered: Yet the said William did not regard his said last-mentioned promise and undertaking, but thereby craftily and subtilly deceived the said James in this, to wit, that the said goods, so by him shipped as last aforesaid, were not, at the time of so shipping thereof, packed in a merchantlike manner, nor were they then in such marketable condition as to reach Bengal aforesaid, in a perfect saleable state, sea and ship hazard excepted; but on the contrary, the said James saith, that a great part of the said goods so shipped by the said William as last aforesaid, were at the time of so shipping the same, packed in a very loose, careless, and unmerchantlike manner, and were not then in such marketable condition as to reach Bengal aforesaid in a perfect saleable state, sea and ship hazard excepted; and that thereby, and in consequence thereof, and not by, in, or through any sea or ship hazard, the said last-mentioned goods reached Bengal aforesaid, and were then unshipped and delivered in a damaged and in an unsaleable and unmarketable state and condition, to wit, at London aforesaid, in the parish and ward aforesaid: whereby, and by reason of which said several premises, one Robert Stewart, who would otherwise have bought and purchased them of and from the said James at certain advanced and beneficial prices, refused to take or purchase them; and the said James was ultimately forced and obliged to sell and dispose of the same to other persons at and for a much less price or sum of money than they otherwise would and ought to have produced to him, and at a loss amounting in the whole to a large sum of money, to wit, the sum of one thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas, on the said fifteenth day of October in the year of Our Lord 1788 aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said James at the like request of the said William, had then and there bought of, and bargained and agreed with the said William for certain other goods and merchandizes, consisting of cloths, ratteens, kerseymeres, cottons of various sorts, to be sent to Bengal aforesaid in the East Indies, for the purpose of sale there, the said William undertook, and then and there faithfully promised the said James to furnish and supply him with such goods as last aforesaid, and that the same should and would be good and marketable goods, and properly packed: and although certain goods were afterwards, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, delivered by the said William unto and for the said James, packed as and for the said goods so bought and bargained for as last aforesaid, and for the purpose of sale there as aforesaid; and although such goods were then and there accepted and received by the said James, the said James then and there being ignorant of the real quality and condition thereof; and although the said last-mentioned goods afterwards, and before the

4th Count, that goods should be marketable and properly packed,

exhibiting of the bill of the said James, arrived at Bengal aforesaid, and were then unshipped and delivered as and for the said goods so bought and bargained for as last aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid: Yet the said William did not regard his said last-mentioned promise and undertaking, but thereby craftily and subtilly deceived the said James in this, to wit, that the said goods, so delivered by the said William as last aforesaid, were not, at the time of so delivering the same as aforesaid, goods, and marketable goods, nor were the same properly packed; but, on the contrary, the said James saith, that the said last-mentioned goods *were now*, at the time of so delivering the same as aforesaid, bad goods, and goods of an inferior sort and value than the said goods so bought and bargained for by the said James as last aforesaid, and unmarketable; and the said last-mentioned goods were also, at the time of such delivery as aforesaid, so loosely, carelessly, and improperly packed, as to thereby and in consequence be, and afterwards, to arrive at Bengal aforesaid, and be there delivered, very much wetted, dirtied, discoloured, tumbled, rumpled, and torn, and in many other respects damaged and injured: whereby, and by reason of which said several premises, the said James was hindered and prevented from selling and disposing of the said last-mentioned goods at such beneficial rates and prices as he could otherwise have obtained for the same, and was ultimately forced and obliged to sell and dispose of the said last mentioned goods at and for a much less price or sum of money than they otherwise would and ought to have produced to him, and at a loss amounting in the whole to a large sum of money, to wit, the sum of one thousand pounds, to wit, at London aforesaid, in the parish and ward aforesaid. (5th Count, for one thousand pounds money had and received; 6th, for one thousand pounds lent and advanced; 7th, same laid out and expended; 8th, same upon an account stated; common conclusion; damages one thousand pounds.)

Declaration by
a soap-boiler a-
gainst defendant
for not sending
a box of soap
delivered to him
from L. to N.
and delivering
same to A. B.
per quod A. B.
refused to em-
ploy plaintiff
any longer.

MIDDLESEX, to wit. For that whereas before and at the time of the making of the promise and undertaking hereafter mentioned, he the said plaintiff was and still is a dealer in soap, and the trade and business of a dealer in soap hath, during all the time aforesaid, used, exercised, and carried on, and still doth use, exercise, and follow, to wit, at, &c. And whereas the said plaintiff, being such dealer in soap, and using, exercising, and following the said trade and business, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered, and caused to be delivered to him the said defendant, a certain box, containing a large quantity, to wit, three hundred pounds weight of soap, of great value, to wit, of the value of one hundred pounds of lawful money of Great Britain, to be by him the said defendant safely and securely kept, sent, and conveyed from L. to N. in the county of N. and there, to wit, at, &c. to be delivered to A. B. according to the direction of the said plaintiff, for a certain reason-
ble

ble hire or reward to be therefore paid to him the said defendant, be the said defendant undertook, and then and there faithfully promised the said plaintiff safely and securely to keep, send, and convey the said box, containing the said soap so delivered to the said plaintiff as aforesaid, from L. aforesaid to N. aforesaid, and there, to wit, at, &c. to deliver the same to the said A. B. according to the directions of the said plaintiff: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff, hath not safely and securely kept, conveyed, and sent the said box containing the said soap, and so delivered to him the said defendant as aforesaid, from L. aforesaid to N. aforesaid, and there, to wit, at, &c. to be delivered to the said A. B. but, on the contrary thereof, wholly omitted and neglected to send and convey the same, and therein failed and made default, to wit, at, &c. contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid; by reason whereof the said A. B. hath not only lost and been deprived of the profits and emoluments arising and accruing to him from the sale of the said box containing the said soap as aforesaid, and which he otherwise would have gotten and obtained, but also be the said A. B. hath ever since refused, and still doth refuse, to employ the said plaintiff in the way of his said trade and business, which he the said A. B. was used and accustomed to do, and would have done, and hath thereby lost and been deprived of the custom of the said A. B. and of great gains, profits, and emoluments arising therefrom, to wit, at, &c. And whereas, &c. (Second Count same as first, omitting the special damage by the loss of A. B.'s custom, and instead thereof say, "by reason whereof the said last-mentioned box, containing the said last-mentioned soap, was and is of no use or value to the said plaintiff, and is wholly lost to the said plaintiff, to wit, at, &c.") And whereas, &c. (same as second Count, except not stating that the box was to be delivered to A. B. but only say, "to be there delivered according to the direction of " plaintiff." And whereas also afterwards, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered, and caused to be delivered to the said defendant, a certain other box containing another large quantity, to wit, three hundred pounds weight of soap of the said plaintiff of great value, to wit, of the value of other one hundred pounds, of, &c. to be by him the said defendant, within a reasonable space of time then next following, delivered to some common carrier accustomed to carry goods, wares, and merchandizes from London aforesaid to N. aforesaid, and in the mean time, and until such delivery, to be by him the said defendant kept safely and securely for a certain other reasonable reward to be therefore paid the said defendant by the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would, within a reasonable time then next following, deliver the said box, and the soap therein contained, to some common carrier accustomed to carry goods, wares, and merchandizes from London aforesaid to N. aforesaid, in order that the

Second Count.

Third Count.

Fourth Count,
against defend-
ant for not deli-
vering the box
within a reason-
able time to
some common
carrier used to
carry goods from
L. to N. per
quod the soap
wasted, and a
reduction in the
price taking
place, the soap
became of little
or no value.

same box, and the same soap therein contained, might be by such common carrier carried and conveyed from L. aforesaid to N. aforesaid, and in the mean time, and until such delivery, that he the said defendant would safely and securely keep the said last-mentioned box, and the said soap therein contained: Yet the said defendant, not regarding, &c. but contriving, &c. did not within a reasonable time deliver or cause to be delivered, nor hath he at any time hitherto delivered the said last-mentioned box, and the soap therein contained, to any common carrier accustomed to carry goods, wares, and merchandizes, from L. aforesaid to N. aforesaid, but wholly neglected and omitted so to do, and hath therein failed and made default, to wit, at, &c. contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid; by reason whereof, and of the reduction in the price of soap which hath happened and taken place since the time of delivering the said last-mentioned soap, and of the soap therein contained, and by the wasting and diminishing thereof, the same soap is greatly reduced in value, and is become of little or no use or value to the said plaintiff, to wit, at, &c. (Add the common Counts.)

Drawn by MR. GRAHAM.

Declaration against defendant for not delivering to plaintiff certain ruffles won by plaintiff at a raffle.

MIDDLESEX, to wit. Susannah Howard complains against M. S. being, &c.; for that whereas, on the first of June 1771, at W. in the said county of M. the said M. was possessed of and in one pair of muslin worked ruffles of great value, to wit, of the value of five pounds; and being so possessed thereof, afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, she the said M. set up and put up the said ruffles to be raffled for with dice in manner following, that is to say, that every person willing to raffle for the same should pay to her the said Margaret the sum of three shillings and sixpence, and, upon payment thereof, to be entitled and allowed to raffle; and that the person who should on the said raffle throw the highest number with the said dice should be entitled to and have the said ruffles: and the said Susannah further says, that she the said Susannah and divers, to wit, twenty other persons, afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, did become and were adventurers in the said raffle, and did then and there pay the said sum of three shillings and sixpence to the said M. for the same; and afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, did raffle for the said ruffles: and the said Susannah further says, that she the said Susannah did then and there throw and cast the highest number with the said dice, and higher than any other person who raffled for the same as aforesaid, to wit, at W. aforesaid, in the said county, and then and there won the said ruffles; and by reason thereof, she the said Susannah became and was entitled to receive of the said Margaret the said ruffles, and the said Margaret then and there ought to have delivered the same to her: and the said Susannah so being entitled to receive

receive the said ruffles of the said M. as aforesaid, she the said M. in consideration of the premises, afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, undertook, and to the said Susannah then and there faithfully promised to deliver to the said Susannah the said ruffles, when she the said Margaret should be thereunto afterwards requested: nevertheless the said M. not regarding, &c. hath not yet delivered the said ruffles to the said S. (although often requested so to do), but to deliver the same she the said Margaret hath hitherto wholly refused, and still doth refuse. And whereas also afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, in consideration that the said S. and divers, to wit, twenty other persons, at the special instance and request of the said M. had then and there agreed to raffle for a certain other pair of worked muslin ruffles, of the value of other five pounds, and had each of them then and there paid to the said Margaret the sum of three shillings and sixpence for the liberty of raffling for the same, she the said Margaret undertook, and then and there faithfully promised to deliver the said last-mentioned ruffles to such person as should throw or cast the highest number with the dice in the said raffle: and the said Susannah in fact says, that she the said Susannah, and the said other last-mentioned persons, afterwards, to wit, on the same day and year aforesaid, in the said county, did raffle for the said last-mentioned ruffles, and the said Susannah did then and there throw and cast the highest number with the dice; and by reason of the premises, she the said Susannah became entitled to receive the said last-mentioned ruffles of the said Margaret afterwards, to wit, at, &c. whereof, &c.: Yet the said Margaret, not further regarding her said last-mentioned promise and undertaking as aforesaid, but contriving, &c. hath not yet delivered the said last-mentioned ruffles to the said S. although often, &c. but to deliver the same to the said Susannah hath altogether refused, and still doth refuse, to the damage, &c.

FOSTER BOWER.

LANCASHIRE, ff. Richard Goning complains of Robert Slinger, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass upon the case, &c. for that whereas heretofore, to wit, on the seventh day of May, in the year of Our Lord 1788, at Blackburn, in the county of Lancaster, in consideration that the said Richard, at the special instance and request of the said Robert, had then and there lent to the said Robert a certain mare of him the said Richard of a large value, to wit, of the value of forty pounds of lawful money of Great Britain, to be used by the said Robert for a reasonable reward to be therefore paid to the said Richard, and to be returned upon request to the said Richard, he the said Robert undertook, and then and there faithfully promised the said Richard, to return the said mare to the said Richard upon request, and to pay to him so much money as he should reasonably deserve to have for the use of

Declaration in
B. R. in *assumpsit*
for a mare *let*
to hire, to be re-
turned on re-
quest, and for
the reasonable
hire, in one
Count.

the same for so long a time as the same should be kept from the said Richard : and the said Richard in fact says, that although the said Robert then and there had and received the said mare for the purpose and upon the terms aforesaid ; and although the said Richard afterwards, to wit, on the nineteenth day of January, in the year of Our Lord 1790, and often afterwards, to wit, at Blackburn aforesaid, in the county aforesaid, requested the said Robert to redeliver the said mare to him the said Richard ; and although the said Richard reasonably deserves to have of the said Robert for the use of the said mare under the said loan a large sum of money, to wit, the sum of forty pounds of like lawful money, of which the said Robert then and there had notice : Yet the said Robert, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Richard in this behalf, did not, upon such request, redeliver the said mare, nor hath he as yet redelivered the same, or paid the said Richard for the use of the same, but he so to do hath hitherto wholly refused, and still doth refuse. And whereas afterwards, to wit, on the day and year first above-mentioned, at Blackburn aforesaid, in the county aforesaid, in consideration that the said Richard, at the like special instance and request of the said Robert, would lend to the said Robert a certain other mare of the said Richard of a large value, to wit, of the value of other forty pounds of like lawful money, he the said Robert undertook, and then and there faithfully promised the said Richard to return to him the said mare last-mentioned upon request : and the said Richard avers, that he, confiding in the said last-mentioned promise and undertaking of the said Robert, did then and there lend and deliver to him the said last-mentioned mare, who then and there took and received the same of and under the said loan. And whereas afterwards, to wit, on the day and year last above-mentioned, at Blackburn aforesaid, in the county aforesaid, in consideration that the said Richard, at the like special instance and request of the said Robert, had then and there lent to the said Robert a certain other mare of him the said Richard of a large value, to wit, of the value of other forty pounds of like lawful money, he the said Robert undertook, and then and there faithfully promised the said Richard to return the same to him upon request ; and although the said Robert then and there received the said last-mentioned mare under the said loan : Yet the said Richard in fact says, that the said Robert, not regarding his said two last-mentioned promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Richard in this behalf, hath not as yet delivered either of the said two last-mentioned mares to the said Richard (although so to do the said Robert was requested by the said Richard afterwards, to wit, on the first day of January, in the year of Our Lord 1790, and often afterwards, to wit, at Blackburn aforesaid, in the county aforesaid), but he so to do hath hitherto wholly refused, and still refuses, and the same mares are still

Second Count.

Third Count.

still undelivered to the said Richard. (2d Count, for the money lent on an executory promise; 3d Count, on a promise, on a consideration executed; 4th and 5th, for hire of horses; *indebitatus assumpsit*, and *quantum meruit*; 5th, 6th, and 7th, common money Counts.)

THOMAS BARROW.

KENT, *ff.* Thomas Ady complains of Arthur Pennall, being, &c. of a plea of trespass on the case; for that whereas the said Thomas, at the time of the making of the agreement hereafter next mentioned, was and still is lawfully possessed of and in a certain sloop called the O sloop, with the masts, yards, sails, rigging, furniture, and other appurtenances thereunto belonging; and being so thereof possessed, it was, on the fourth day of November A. D. 1775, at Maidstone, in the county aforesaid, agreed by and between the said Thomas and the said Arthur, that the said Arthur should command the said sloop of him the said Thomas, as master thereof on board the same, from thenceforth for so long a time as the parties should please; and that the said Arthur should, during all such time, at his own costs and charges, find and provide sailors and other necessary hands to man the said sloop, and should also, at his own proper costs and charges, during all that time, find and provide victuals and drink, and all other necessary provisions, for the said sloop's company so to be found and provided by him the said Arthur, and that the said Arthur should use the said sloop and navigate the same in the carriage of goods, merchandize, and passengers on freight; and that the said Arthur should pay all port and harbour dues, charges, and other incident expences accruing, arising, and growing due, and in using and navigating of the said sloop, and have the performing of any voyage or voyages whatsoever with the same sloop; and that the said Thomas should, at his own proper costs and charges, find, provide, and pay for, all wear and tear of said sloop during such time as the said Arthur should command the said sloop and use the same; and that the said Arthur should have and retain to his own use the sum of every eight-pence out of every shilling with said sloop earned and gained in the carrying of any goods, merchandizes, or passengers, or performing of any voyage whatsoever; and that the said Arthur should pay and allow to the said Thomas for the use of the same sloop, and for the wear and tear thereof during such time as the said Arthur should use and command the same in manner aforesaid, the sum of four-pence out of every shilling during such time in and with the said sloop earned and gained in the carrying of any goods, merchandizes, or passengers for freight, or performing of any voyage whatsoever. And the said agreement being so made, &c. (Mutual promises). And the said Arthur afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, did enter on board the said ship, and did take on him the command of the said sloop as master thereof, and did man the same with sailors and other necessary hands, and did afterwards, at divers times between the

Declaration in B R. on special agreement, at the suit of the owner of a sloop against the defendant who had hired her, for not paying plaintiff 4d. out of every shilling earned by the said sloop, according to the terms of the agreement.

making of the said agreement and the first day of September 1776, perform divers voyages in and with the same sloop, and did in those voyages carry divers goods, wares, and merchandizes, and passengers on board the said sloop for freight; and whereby he the said Arthur did with the said sloop at those times earn, gain, and acquire divers large sums of money, in the whole amounting to the sum of forty pounds, to wit, at, &c. aforesaid, and then and there received the said monies; whereby, according to the tenor and effect of the aforesaid agreement, and of the said promise and undertaking of the said Arthur so made as aforesaid, he the said Arthur became liable to pay, and ought to have paid to the said Thomas, the sum of thirteen pounds six shillings and eightpence, being at and after the rate of fourpence in every shilling of the aforesaid sum of forty pounds, so earned, gained, and acquired by the said Arthur in and with the said sloop as aforesaid: Yet the said Arthur, not regarding, &c. but contriving, &c. hath not yet paid the aforesaid sum of thirteen pounds six shillings and eightpence, or any part thereof, to the said Thomas (although, &c. was requested by the said Thomas afterwards, and after the said Arthur had with the said sloop earned, gained, and acquired the said sum of forty pounds in manner aforesaid, to wit, on the first September A.D. 1776 aforesaid, and often afterwards, to wit, at, &c. aforesaid), but he to pay the same, &c. And whereas the said Arthur afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, was indebted to the said Thomas in forty pounds for the hire and use of a certain sloop of the said Thomas with her appurtenances, before that time let to hire to the said Arthur by the said Thomas, at the special instance and request of the said Arthur, and, according to that letting to hire, had and used by the said Arthur for a long time then elapsed; and being so indebted, *quantum meruit* accordingly. (Counts for work and labour by the plaintiff and his servants; money lent, &c. had and received, &c. laid out, &c.; and common conclusion to those Counts.)

Quantum meruit
for the hire and
use, &c.

Declaration in
special *assumpsit*
to take back a
horse sold to
plaintiff as
found, and to
return the price
paid.

First Count, on
the special a-
greement.

See Dougl. Rep.
18 24.

Cowp. 818.

NORTHAMPTONSHIRE, ff. Edward Hartley complains of John Dunkley, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case, &c.; for that whereas heretofore, to wit, on the twenty first day of August, in the year of Our Lord 1790, at Rugley, in the county of Northampton, the said Edward bought of the said John a certain horse at and for a certain large price, to wit, the price of twenty-seven pounds of lawful money of Great Britain, to be therefore paid by the said Edward to the said John; and it was then and there agreed by and between the said Edward and the said John, that the said John should deliver to the said Edward the said horse, and that the said Edward should accept and take the said horse of the said John, and should pay to the said John the said rate or price so to be paid for the said horse; and the said John, at the said time of the said sale of the said horse, and of making

making the said agreement, warranted the said horse to be found in all respects; and it was then and there further agreed between the said parties, that in case the said horse should afterwards prove to be unsound at the time of making the said agreement, the said Edward was to return the said horse back to the said John; and in such case the said John was to take again the said horse, and to return and pay back the said price thereof to the said Edward: and the said agreement being so made as aforesaid, afterwards, to wit, on the day and year aforesaid, at Rugley aforesaid, in the county aforesaid, in consideration that the said Edward, at the special instance and request of the said John, had then and there undertaken and faithfully promised the said John to perform and fulfil the same in all things therein contained on the part and behalf of the said Edward to be performed and fulfilled, he the said John undertook, and then and there faithfully promised the said Edward to perform and fulfil all things in the said agreement contained on the part and behalf of the said John to be performed and fulfilled, according to the true intent and meaning thereof: and the said Edward in fact saith, that, in pursuance of the said agreement, the said John then and there delivered the said horse to the said Edward, and the said Edward then and there accepted and took the said horse of the said John, and then and there paid to the said John the said sum of twenty-seven pounds for the same; and that afterwards, to wit, on the second day of October, in the year aforesaid, at Rugley aforesaid, in the county aforesaid, it proved and was manifest, that the said horse, at the time of making the said agreement, and also on the day and year last aforesaid, was and remained unsound, that is to say, in the eyes; whereof the said John then and there had notice. And whereas afterwards, to wit, on the day and year first above mentioned, at Rugley aforesaid, in the county aforesaid, in consideration that the said Edward, at the like special instance and request of the said John, had then and there bought of the said John a certain other horse at and for a large price, to wit, the price of twenty-seven pounds of like lawful money then and there paid by the said Edward to the said John for the same, as and for a sound horse, he the said John then and there undertook, and faithfully promised the said Edward, that if the said Edward would receive the said last-mentioned horse, and the same prove unsound, he the said John would take back the said horse, and return to the said Edward the said price so by him paid for the same: and the said Edward in fact says, that although he received and paid for the said last-mentioned horse on the terms aforesaid, in faith of the said promise of the said John; and although the same afterwards proved to be unsound in the eyes at the time of the said sale and delivery thereof, and so remained and continued; whereof the said John afterwards, to wit, on the second day of October, in the year aforesaid, at Rugley aforesaid, in the county aforesaid, had notice: Yet the said John, not regarding his said agreement in the said first Count, nor his said promises and undertakings in the said last Count mentioned, but contriving and fraudulently intending craftily

Second Count,
on a more general
promise;
and special conclusion to both.

Third Count, on a promise that the horse was found made after he was bought and paid for, with an averment of the contrary; and common money Counts.

craftily and subtilly to deceive and defraud the said Edward in this behalf, hath not as yet taken back the said horses in those Counts mentioned, or either of them, nor hath as yet repaid to the said Edward the said prices of the said horses so by him the said John received for the same as aforesaid, or either of them (although to take back the said horses, and to repay to the said Edward the said prices so by him paid for the same, he the said John was requested by the said Edward afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at Rugley aforesaid, in the county aforesaid), but he the said John so to do hath hitherto wholly refused, and still refuses; whereby the said Edward hath not only lost the use of his said money so by him paid as aforesaid, but hath also been put to a great expence, to wit, to the expence of twenty pounds, in keeping and maintaining the said horses from the time of the aforesaid sale thereof hitherto, to wit, at Rugley aforesaid, in the county aforesaid. And whereas afterwards, to wit, on the day and year first above mentioned, at Rugley aforesaid, in the county aforesaid, in consideration that the said Edward, at the like special instance and request of the said John, had then and there bought of the said John a certain other horse, and had then and there paid to the said Edward a certain other large sum of money, to wit, the sum of twenty-seven pounds for the same, he the said John undertook, and then and there faithfully promised the said Edward, that the said last-mentioned horse was found: Yet the said John, contriving and fraudulently intending wrongfully to injure the said Edward in this behalf, did not regard his said last-mentioned promise and undertaking, but thereby craftily and subtilly deceived the said Edward in this, that the said last-mentioned horse, at the time of making the said promise and undertaking respecting the same, and also at the time of the aforesaid sale thereof, was not found, but was then and there unfound; whereby, and by reason whereof, the said last-mentioned horse became of no use or value to the said Edward, to wit, at Rugley aforesaid, in the county aforesaid. (Counts for money lent and advanced, had and received; account stated; and common conclusion. Pledges, &c.)

T. BARROW.

Case and Opinion on the implied Warranty of a Horse.

THE mare is a dangerous runaway mare, and it can be proved beyond doubt. But no person but plaintiff and defendant being present when defendant warranted her quiet, we have no witness of that. The only proof we have of a warranty is the price, thirty guineas, which the plaintiff contends is sufficient, the mare being aged, and in appearance not worth more than 20*l*.

You will please to advise whether, under the above circumstances, the plaintiff may with safety proceed to trial upon proof of the price paid, and the vicious-

ness of the mare, and being aged, and in appearance not worth more than 20*l*. without producing a witness to prove defendant's warranting her quiet.

IT has been imputed to Lord Mansfield, that he had expressed an opinion at *Nisi Prius*, that a found price paid for a horse raised a presumption in law that the horse was found, though he was sold without a warranty; but whether such an opinion ever escaped him or not, a different doctrine now obtains; and it is now held, that without proof of an express warranty, the law will not imply one from the price, however large.

No longer ago than last Term, I remember Mr. Justice Buller ruling at the Sittings in C. B. London, that the price of a horse was arbitrary from 30l. to 100l. and so on according to the character or pedigree of the animal, or the reputation of the breeder or seller, and that no inference of soundness or unsoundness was to be made from it. The same reason I think applies to the temper of a horse, and governs this case.

T. BARROW.

MIDDLESEX, ss. William Fletcher complains of Daniel Dean, in the custody of the marshal, &c.; for that whereas the said William, at the special instance and request of the said Daniel, on the third day of October in the year of Our Lord 1732, at the parish of St. Botolph without Aldgate, in the said county, hired of the said Daniel one gelding, for a journey with him the said William, from thence to Chester, in the county of Chester, and from Chester aforesaid back to the parish aforesaid, for a certain price or hire, to wit, for the price of one hundred shillings of lawful money of Great Britain, he the said Daniel assumed upon himself and undertook that the said gelding was fit and able to perform the said journey; and although the said William afterwards, to wit, on the said third day of October, set forward on his said journey to Chester on the said gelding so hired as aforesaid; yet, notwithstanding the assumption and undertaking of the said Daniel as aforesaid, the said gelding was not fit and able to perform the said journey, but tired on the road in the said journey, and became entirely unfit and unable to perform the residue of the said journey; by reason of which he the said William was put unto and sustained great expences in and about providing himself with horses for the residue of the said journey. *And whereas* the said Daniel afterwards, to wit, on the same day and year, at the parish aforesaid, was indebted to the said William in one other hundred shillings of like lawful money of Great Britain, for money by the said Daniel for the use of the said William before that time had and received; and being so indebted, &c.: Nevertheless, &c. to the damage of the said William of nine pounds nineteen shillings. And therefore he brings suit, &c.

Declaration for letting a horse to plaintiff to hire, not capable of performing the journey.

ad Count, for money had and received.

J. HARDCASTLE.

LONDON, to wit. Quintin Dick complains of William Mornick, being in the custody, &c. for that whereas the said William, before and at the time of the making of the promise and undertaking hereinafter next mentioned, was, and for a long time from thence following, to wit, from thence hitherto, has been master and commander of a certain ship or vessel called The Adamant, to wit, at London, in the parish of St. Mary le Bow in the ward of Cheap; which said ship or vessel, at the time of the making of the promise and undertaking hereafter next mentioned, was in parts beyond the seas, to wit, at Tortola in the West Indies, and bound upon a voyage from thence to the port of London in this kingdom;

By consignee of goods against the master of a ship upon a bill of lading to deliver goods to plaintiff, with a special indorsement, on condition that plaintiff should accept bills drawn by consignee.

kingdom : And the said Quintin in fact says, that whilst the said William was so master and commander of the said ship or vessel called The Adamant as aforesaid, and whilst the said ship or vessel was so at Tortola as aforesaid, bound upon the voyage as aforesaid to wit, on the eighteenth day of July A. D. 1788, at Tortola aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, one Richard Foster caused to be shipped in and upon the said ship or vessel, then being in the port of Tortola aforesaid divers goods, wares, and merchandizes, that is to say, thirty Muscovado hogsheds of sugar, in good order and well conditioned, to be carried in the said ship or vessel from the port of Tortola aforesaid to London aforesaid, and there to be delivered in like good order and well conditioned, the dangers of the seas only excepted, to the said Quintin or to his assigns, for a certain reasonable freight or hire to be therefore paid to the said William, to wit, at the rate of three shillings and sixpence per each one hundred pounds weight, with primage and average accustomed ; whereof the said William afterwards, to wit, on the same day and year aforesaid, at Tortola aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, had notice : and thereupon the said William, so being master and commander of the said ship or vessel as aforesaid, afterwards, to wit, on the same day and year aforesaid, at Tortola aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, made a certain bill of lading, his own proper hand-writing being thereunto subscribed, and thereby then and there acknowledged the shipping of the said thirty hogsheds of sugar in and upon the said ship or vessel called The Adamant, and undertook, at her safe arrival at London aforesaid from that voyage aforesaid, to deliver the said thirty hogsheds of sugar in good order and well conditioned, the dangers of the seas only excepted, to the said Quintin, or to his assigns, he or they paying primage and average, &c. as aforesaid ; and by a certain written indorsement then and there made upon the said bill of lading, with the proper hand-writing of the said William thereunto subscribed, it was declared, that the said thirty hogsheds of sugar, in the said bill of lading mentioned, were consigned to the said Quintin upon the express condition that he the said Quintin would accept and pay certain bills of exchange drawn upon him the said Quintin by one Richard Foster of St. Croix, bearing date the second of July A. D. 1788, in favour of certain persons carrying on trade and commerce under the name, style, and firm of Travers, Son, and Bannantine, at ninety days sight for one thousand pounds sterling ; but if the said Quintin would not accept or pay the said bills, or to the amount of the said sugars, the said William, by the said indorsements so made thereon as aforesaid, engaged to deliver the said sugars to the holder of the said bills ; and the said William then and there delivered the said bill of lading, with the said indorsement so made thereon as aforesaid, to the said Quintin as aforesaid, at London aforesaid, at the parish and ward aforesaid ; by reason whereof the said Wil-

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ham then and there became and was liable and bound to deliver the said hogheads of sugar to the said Quintin, according to the tenor and effect of the said bill of lading, and of the said indorsement so made thereon as aforesaid: and being so liable and bound, he the said William afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Quintin then and there faithfully promised to deliver to him the said hogheads of sugar, according to the tenor and effect of the said bill of lading, and of the said indorsement so made thereon as aforesaid. And the said Quintin in fact says, that the said ship, with the said hogheads of sugar on board thereof as aforesaid, and afterwards, to wit, on the twentieth day of September in the year aforesaid, arrived safe at London aforesaid from that voyage, with the said hogheads of sugar on board: And the said Quintin further says, that he the said Quintin hath always, since the arrival of the said ship as aforesaid, been ready and willing to receive the said hogheads of sugar, and to pay the freight for the same at the rate aforesaid, with primage and average accustomed, as is in the said bills of lading specified, and also to accept and pay the said bills of exchange in the said indorsement mentioned, to the amount of the sugar, to wit, at London aforesaid, in the parish and ward aforesaid; whereof the said William afterwards, to wit, on the thirtieth day of September A. D. 1788, at London aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested to deliver the said hogheads of sugar to the said Quintin, according to his said promise and undertaking in that behalf made as aforesaid: Yet the said William, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Quintin in this behalf, hath not at any time hitherto delivered, or caused to be delivered to the said Quintin, the said hogheads of sugar, or any or either of them, or any part of them; but, on the contrary thereof, he the said William, although not prevented from so doing by the dangers of the seas, hath hitherto wholly neglected and refused so to do, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas also the said William, before and at the time of the making of the promises and undertaking hereinafter next mentioned, was, and for a long time from thence following, to wit, from thence hitherto, has been master and commander of a certain other ship or vessel called The Adamant, to wit, at London aforesaid, in the parish and ward aforesaid, which said last mentioned ship or vessel, at the time of the making of the promise and undertaking hereafter next mentioned, was in parts beyond the seas, to wit, at Tortola in the West Indies, and bound upon a voyage from thence to the port of London in this kingdom: And the said Quintin in fact says, that whilst the said William was so master and commander of the said last mentioned ship or vessel called The Adamant as aforesaid, and whilst the last mentioned ship or vessel was at Tortola as aforesaid, bound upon the voyage last aforesaid, to wit, on the said tenth day of

ad Court, upon
the bill of lading,
without stating
the special in-
dorsement.

of July in the year aforesaid, at Tortola aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, one Richard Foster caused to be shipped in and upon the said last mentioned ship or vessel, then being in the said port of Tortola aforesaid, divers goods, wares, and merchandizes, that is to say, thirty hogheads of Muscovado sugar in good order and well conditioned, to be carried in the said last mentioned ship or vessel from the port of Tortola aforesaid to London aforesaid, and there to be delivered in like good order and well conditioned, the dangers of the seas only excepted, to the said Quintin or to his assigns, for a certain reasonable freight or hire to be therefore paid to the said William, to wit, at the rate of three shillings and sixpence for each and every one hundred pounds weight, primage and average accustomed; whereof the said William afterwards, to wit, on the same day and year last aforesaid, at Tortola aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, had notice; and thereupon he the said William, so being master and commander of the said last mentioned ship or vessel aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, made a certain bill of lading, his own proper hand-writing being thereunto subscribed, and thereby then and there acknowledged the shipping of the said last mentioned hogheads of sugar in and upon the said last mentioned ship or vessel, in the port of Tortola aforesaid, for the said last mentioned voyage to London aforesaid, and undertook, at his safe arrival at London from the said last mentioned voyage, to deliver the said last mentioned thirty hogheads of sugar in good order and well conditioned, the dangers of the seas only excepted, to the said Quintin or to his assigns, he or they paying freight, with primage and average as last aforesaid; and the said William then and there delivered the said bill of lading to the said Quintin; by reason whereof, he the said William then and there became and was liable and bound to deliver to the said Quintin the last mentioned hogheads of sugar, according to the tenor and effect of the said last mentioned bill of lading; and being so liable, he the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said Quintin then and there faithfully promised, to deliver to him the said last mentioned bill of lading. And the said Quintin in fact says, that the said last mentioned ship, with the said last mentioned hogheads of sugar on board as aforesaid, afterwards, to wit, on the twentieth day of July in the year aforesaid, departed and set sail from Tortola aforesaid, upon the voyage last aforesaid, and afterwards, to wit, on the twentieth day of September in the year aforesaid, arrived safe at London aforesaid from that voyage, with the said last-mentioned hogheads of sugar on board: And the said Quintin further says, that he the said Quintin hath always since the arrival of the said last mentioned ship as aforesaid been ready and willing to receive the last mentioned hogheads of sugar, and to pay the freight for the same at the rate last aforesaid, with primage and average accustomed, as in the said last mentioned

Bill of lading specified; whereof the said William afterwards, to wit, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had notice, and was then and there requested to deliver the said last mentioned hogheads of sugar to the said Quintin, according to his last mentioned promise and undertaking: Yet the said William, not regarding his said last mentioned promise and undertaking so made by him as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Quintin in this behalf, hath not at any time hitherto delivered, or caused to be delivered to the said Quintin, the said last mentioned hogheads of sugar, or any or either of them, or any part of them; but on the contrary thereof, he the said William (although not prevented from so doing by the dangers of the seas) hath wholly neglected and refused, and still doth neglect and refuse so to do, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas also on the said eighteenth day of July in the year aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said Quintin, at the special instance and request of the said William, had before then caused to be delivered to the said William divers other goods, wares, and merchandizes, to wit, thirty hogheads of Muscovado sugar of great value, to wit, of the value of six hundred pounds, to be safely and securely carried and conveyed by the said William in a certain other ship or vessel called or known by the name of The Adamant, from parts beyond the seas, to wit, from Tortola aforesaid, in the West Indies, to the port of London in this kingdom, and there, upon the safe arrival of the said ship or vessel, to be delivered in good order and well conditioned, the dangers of the seas only excepted, to the said Quintin or his assigns, for a certain reasonable hire or reward, to wit, at the rate of three shillings and sixpence for each hundred weight, primage and average accustomed, to be therefore paid to the said William, he the said William undertook, and to the said Quintin then and there faithfully promised to safely and securely carry and convey the said last mentioned hogheads of sugar from Tortola aforesaid to the port of London aforesaid, and there, upon the safe arrival of the said last mentioned ship at London aforesaid, to deliver the same in good order and well conditioned, the dangers of the seas only excepted, to the said Quintin or to his assigns; and although the said last mentioned ship or vessel performed the said last mentioned voyage, and afterwards, to wit, on the twentieth day of September in the year aforesaid, arrived in safety at the port of London aforesaid from the said voyage, with the said last mentioned hogheads of sugar on board: Yet the said William, not regarding his said last mentioned promise and undertaking, but craftily and subtilly intending to deceive and defraud the said Quintin in this behalf, hath not at any time delivered, or caused to be delivered, to the said Quintin the last mentioned hogheads of sugar, or any or either of them, or any part of them; but on the contrary thereof, he the said William (although not prevented by dangers of the seas from so doing) hath hitherto altogether

3d Count, in consideration that plaintiff had caused divers goods, to wit, 30 hogheads of sugar, to be delivered to defendant, to be carried from Tortola to London.

altogether neglected and refused, and still doth neglect and refuse to do, to wit, at London aforesaid, in the parish and ward aforesaid. (Money paid; money had and received; account stated; breach to the last promises.)

V. GIBBS

Declaration on special agreement, factor against his principal, for not paying him the money laid out in the purchase of barley, together with commission, and not accepting the same when received, to be delivered according to agreement.

THAT whereas on the twentieth of November 1748, at, &c. in the said county of _____, they the said defendants retained and employed the said plaintiff as their factor or agent to buy and purchase, with all convenient speed, for them the said defendants one thousand bushels of bigg or barley of the Carlisle measure, to wit, every bushel thereof containing three Winchester bushels; and it was then and there agreed between the said defendants and the said plaintiff, that the said plaintiff should purchase the said one thousand bushels of bigg or barley for the said defendants at as cheap a rate or price as he could, and that the said plaintiff should deliver the same when bought as aforesaid, at, &c. aforesaid; or thereabouts, on board such vessel as the said defendants would send thither for that purpose; and that the said defendants should pay to the said plaintiff all such money as the said plaintiff should pay for the said bigg or barley, and should also pay to him for his commission for bringing the same, twopence for every bushel of the said one thousand bushels of bigg or barley, over and above the rates or prices which he the said plaintiff should pay for the same. And the said agreement being so made, &c. (Mutual promises). And the said plaintiff saith, that in pursuance of the said agreement, he the said plaintiff afterwards, as soon as he could, to wit, on the first day of December in the year aforesaid, at, &c. aforesaid, did buy and purchase for the said defendants, as their agent or factor, one thousand bushels of bigg or barley of the aforesaid Carlisle measure, at as cheap a rate or price as he could, according to the said agreement, and afterwards delivered five hundred and fifty-seven bushels and a half bushel of the said one thousand bushels of bigg or barley on board a certain sloop or vessel, at, &c. aforesaid, or thereabouts, and which the said defendants had sent there for that purpose, and always, since the buying of the said one thousand bushels of bigg or barley until the day of suing forth the original writ of the said plaintiff, hath been ready to deliver the remaining four hundred and forty-two bushels and a half of the said one thousand bushels to the said defendants, according to the said agreement, on board any vessel or vessels which the said defendants might have sent for that purpose to, &c. aforesaid, or thereabouts; and that the said plaintiff paid for the said one thousand bushels of bigg or barley so bought and purchased as aforesaid, a large sum of money, to wit, the sum of three hundred pounds, to wit, at, &c. aforesaid; of all which said premises the said defendants there had notice: Yet the said defendants, not regarding, &c. but contriving, &c. have not, nor have either of them, paid to the said plaintiff the said money so paid by the said plaintiff for the said bigg or barley, or any part thereof, nor the said commission for buying of the same, or any part thereof, nor have they yet sent any

any vessel or vessels to, &c. aforesaid, or thereabouts, to take in on board the said four hundred and forty-two bushels and an half bushel, residue of the said one thousand bushels of the said rye or barley so bought for them as aforesaid (although to do this the said defendants afterwards, to wit, on the first of February in the year aforesaid, and often both before and afterwards, at, &c. were requested by the said plaintiff); but they to do this have, and each of them hath hitherto, wholly refused, and still do refuse, &c.

Drawn by MR. WARREN.

MIDDLESEX, *ff.* John Willson complains of William Peck, being, &c.; for that whereas, at the time of the making of the promise and undertaking of the said defendant hereafter mentioned, he the said plaintiff was lawfully possessed of and in a certain gelding as of his own proper gelding; and being to thereof possessed, on the twentieth of February 1756, at, &c. aforesaid, the said plaintiff sold to the said defendant, and the said defendant bought of the said plaintiff the said gelding of the said plaintiff, on condition he the said defendant, on a trial to be had by him of the said gelding, should like and approve of the said gelding, at the rate or price of twelve guineas to be therefore paid by the said defendant to the said plaintiff in case the said defendant, on such trial, should like and approve of the said gelding; and it was then and there agreed by and between the said plaintiff and the said defendant, that the said plaintiff should then deliver to the said defendant the said gelding of him the said plaintiff, that the said defendant might keep the same for and during all such time as he should think fit, not exceeding fourteen days from thence next ensuing, and that the said defendant might, during that time, use the said gelding at his pleasure, by way of trying if he liked and approved thereof; and in case he should on such trial like and approve of the said gelding, then the said sale should be absolute; and the said defendant should, at the end of the said fourteen days, pay to the said plaintiff the said rate or price of twelve guineas for the said gelding; but if the said defendant, on such trial of the said gelding, should not like or approve of the said gelding, nor think fit to be the purchaser of the same, then that the said defendant should in such case, at any time within the said fourteen days, be at liberty to return the said gelding to the said plaintiff, and the sale should in such case be entirely off and void, and the said defendant should in that case pay unto the said plaintiff, for the use and trial of the said gelding, the sum of two guineas; and the said agreement being so made, &c. (mutual promises): And the said plaintiff avers, that he the said plaintiff, in pursuance of the said agreement, immediately after the making of the same, to wit, on the same day and year aforesaid, at, &c. aforesaid, delivered to the said defendant the said gelding for the purpose aforesaid; and the said defendant then and there had and received the same of and from the said plaintiff for the purpose aforesaid, and kept the same for a long

Declaration on special agreement; defendant bought a horse of plaintiff on condition of returning him if not liked, on paying so much. Defendant tried and returned the horse, but refused to pay, &c. according to his agreement.

time, though less than fourteen days, to wit, four days, and during all that time there used the said gelding by way of trial, and such trial did not, as he alledged, like or approve of the said gelding, and for that reason he the said defendant afterwards, within the said fourteen days, to wit, on the twenty-fifth of February in the year aforesaid, at, &c. aforesaid, returned the said gelding to the said plaintiff, whereby the said sale thereof was made and there wholly off, and from thenceforth void; and by reason of the premises, the said defendant, according to his promise and undertaking aforesaid, became liable to pay, and ought to pay unto the said plaintiff the said sum of two guineas for the use and trial of the said gelding, to wit, at, &c. aforesaid. (Counts for horse hire, and common conclusion.)

Assumpsit in consideration plaintiff would deliver into defendant's hands goods attached in the hands of the plaintiff, defendant promised to permit a levy on the goods if condemned.

LONDON, ff. Edward Howard complains of John Smith and William Palmer, being, &c.; for that whereas the city of London now is, and from time immemorial hath been, an ancient city, within which said city there now is, and during all the time aforesaid there hath been, a certain court of record held and to be holden before one of the sheriffs of the said city for the time being, daily and every day, except Sundays and holidays, in his counter, situate in the parish of St. Mildred the Virgin, in the Poultry of the same city, in the ward of Cheap, and on every Thursday and Saturday in the Guildhall of the said city, except between the day of and the day of in every year, for the trial and determining of all personal actions arising within the said city and liberties of the said city and jurisdiction of the said court; and that there now is, and for all the said time whereof the memory of man is not to the contrary, there hath been a certain ancient and laudable custom used and approved of within the said city, that is to say, that if any plaint in a plea of debt hath been levied by any person in the court of record of our lord the now king, held before one of the sheriffs of the said city for the time being, in his said counter, situate in the parish of St. Mildred the Virgin, in the Poultry, in the ward of Cheap of the said city, for any cause of action arising within the said city or the liberties thereof, and jurisdiction of that court, against any person or persons, and the plaintiff named in such plaint hath found pledges to prosecute his said plaint, so that by virtue of that plaint it hath been commanded by that court to any serjeant at mace of the said sheriff, and minister of the court aforesaid, to summon such person named defendant in the said plaint, to be at the then next court of our said lord the now king, to be held in the Guildhall of the city aforesaid before such one of the sheriffs of the said city for that time being, to answer such person named the plaintiff in such plaint, in the plea of the said plaint; and if such serjeant at mace and minister of the court aforesaid, by virtue of such precept, hath in the mean time certified to each one sheriff in his said counter, that the defendant in such plaint hath had nothing within the liberty of the said city whereby he could be summoned, nor was found in the same; and it

Recites the process of attachment in the sheriff's court, where goods were condemned by the custom of the city of London, stating the custom.

hath been thereupon by such serjeant at mace and minister of the court returned or certified to the said court so holden before the said one sheriff in his said counter, that any other person hath in his custody and possession any goods or chattels belonging to such defendant; then, at the petition of the said plaintiff in the said plaint made to the said sheriff in his aforesaid counter, such serjeant at mace and minister at the court aforesaid, hath been commanded by the said sheriff in his said counter, that such serjeant at mace should attach the said defendant in the said plaint named, by such goods and chattels so belonging to the said defendant, and being in the hands or custody of the said other person, and keep back the same; so that the said defendant should be at the next court of our said lord the king, to be holden in the Guildhall aforesaid before the said then one sheriff of the sheriffs of the city aforesaid for the time being, to answer such plaintiff named in such plaint, in the plea of such plaint; and if the said serjeant at mace and minister of the court aforesaid, hath returned or certified before the said then one of the said sheriffs of the said city in his counter, that he had attached such defendant by such goods and chattels in the hands and custody of the said other person, and kept back the same, so that the defendant might be at the next court to be holden at the Guildhall, to answer to the said plaintiff in the plea of such plaint; and if such defendant at that court, and at three other courts of our said lord the now king, before the said one of the sheriffs of the said city for the time being severally thereafter to be held in the Guildhall aforesaid, to wit, at four such several courts in the whole, at the petition of such plaintiff or his attorney, being solemnly called, hath not there appeared, but hath made default, and such four defaults of the said defendant at such four courts have been recorded after the said attachment in form aforesaid made, to answer the said plaintiff in the said plaint specified, then at the last of those four courts, or at any other court held after the aforesaid four courts recorded at the prayer of the plaintiff in the said plaint or his attorney there, hath been commanded by the said court to such serjeant at mace and minister of the court aforesaid, that he should give notice to such other person in whose hands and custody such goods and chattels so attached were so attached and kept back, to be at some other court of our said lord the now king, before the said one sheriff in the Guildhall of the city aforesaid thereafter to be held; to shew and demonstrate if he had or knew any thing to say for himself why the said plaintiff, in the said plaint specified, ought not to have an appraisement against him of the aforesaid goods and chattels so as aforesaid in his hands attached and kept back, if the same have not been of greater value than the debt demanded by such plea, and if they have, then a sufficient part of such goods and chattels; and if at such court such serjeant at mace hath returned and certified to that court, that he, by virtue of such precept, had given notice to the said other persons, in whose hands

Petition to
sheriff to attach
defendant by
goods in the
hands of garni-
shee;

and that if de-
fendant at that
court and three
other hath made
default;

serjeant at mace
should give no-
tice to garnishee
to shew why
plaintiff ought
not to have an
appraisement by
two citizens in
the presence of
one of the ser-
jeants at mace,

* See this head in Assumpsit, post.

and the court shall adjudge the goods to be delivered to plaintiff, and plaintiff shall find pledges to restore, if defendant within year and day appear and plead ;

and in case goods are not restored, to take the body of garnishee.

and custody the said goods and chattels so attached were so attached, to be at that same next court to shew in form aforesaid as he was commanded; and if such plaintiff, in the said plaint named, appearing, and such persons, in whose hands and custody such goods and chattels were, being then and there solemnly called, and not appearing but making default, and thereupon at such court it hath been considered by the said court that there should be an appraisement of the aforesaid goods and chattels so as aforesaid attached and kept back in the hands and custody of such person in whose hands and custody such goods and chattels so attached and kept back have been, or of part thereof; and if thereupon such goods and chattels so attached or kept back, or part thereof, have been appraised in the presence of any one of the serjeants at mace of such sheriff, by two citizens of the said city, at any court of our said lord the king, holden before such one sheriff of the said city in the Guildhall aforesaid, that then the said goods and chattels so attached and appraised have been thereupon by such court adjudged to be delivered to the plaintiff named in such plaint, in satisfaction of the debt in such plaint specified, or such part thereof as the said goods and chattels so attached have extended to, or the person named plaintiff in such plaint finding pledges to render and restore such goods and chattels so attached, kept back, and appraised, or the value thereof, as the goods and chattels so as aforesaid, in the hands and custody of the garnishee in such attachment attached and kept back, if within one year and a day then next following, such person named defendant in such plaint should come into the aforesaid court, and the debt aforesaid in such plaint mentioned disprove, or himself of that debt in any manner discharge, or himself to some prison of the lord the king, within the liberty of the city aforesaid being, should render ready to plead with the person named plaintiff in such plaint in and upon such plaint, and the person named the plaintiff in such plaint hath, during all the time aforesaid, been used and accustomed, in case the said goods and chattels so appraised have not been delivered to such person named plaintiff in such plaint, to have, and ought to have execution against the body of the said person in whose hands and possession such goods have been so condemned, awarded to him, by such court, to take the body of such person in whose hands and possession such goods and chattels so attached, kept back, and appraised have been so condemned, to satisfy the person named the plaintiff in such plaint; the value of such goods and chattels so attached and condemned; which said custom, and also all other customs of the said city for all the time aforesaid used and approved, were, by an authority of parliament of the lord Richard the Second, late king of England, &c. after the Conquest, held at Westminster in the county of Middlesex, in the seventh year of his reign, ratified and confirmed to the then mayor and aldermen and commonalty of the city of London, and their successors. And the said Edward Howard further says, that long before, and at the time of the making of the promise and undertaking

ing

of the said John Smith and William Palmer hereafter next mentioned, one Edward Bartles was indebted unto one James Smith in the sum of forty-four pounds for a certain cause of action arising and happening to the said J. Smith within the city of London and jurisdiction of the court of our lord the now king hereafter mentioned to be holden before one Thomas Chitty esquire, late one of the sheriffs of the city of London, hereafter mentioned; and being so indebted, and the said sum of forty-four pounds being wholly unpaid to the said James Smith, he the said James Smith, for the recovery of his aforesaid debt so due and owing from him to the said Edward Bartles, afterwards, and before the making of the promise and undertaking of the said J. Smith and W. Palmer hereafter next mentioned, according to the said custom of the said city of London, from time whereof the memory of man is not to the contrary, there used and approved of within the same city, to wit, at the court of our sovereign lord George the Second, now king of Great Britain, &c. and held before the said Thomas Chitty esquire, then one of the sheriffs of the said city of London, in his counter, situate in the parish of St. Mildred the Virgin, in the Poultry of the same city, in the ward of Cheap, according to the custom of the said city, for all the time whereof the memory of man is not to the contrary used and approved in the same, on Saturday the twenty-third day of March in the twenty-seventh year of the reign of our said lord the king, and in A. D. 1754, the said James Smith, according to the custom of the city aforesaid, from the whole time aforesaid, &c. used, &c. in his proper person came into the aforesaid court of the said lord the king, before the aforesaid T. C. esquire, then one of the sheriffs of the city aforesaid, in the counter aforesaid, and then and there in the same court, according to the custom of the same city, levied his certain plaint in a plea of debt upon demand for forty-four pounds against the said Edward Bartles for the said cause of action so arising within the said city and jurisdiction of the said court; and the said James Smith then and there in the same court, according to the custom of the city aforesaid, &c. found pledges to prosecute his plaint aforesaid, to wit, John Capthall and Richard Gourt, and thereupon then and there the said J. Smith desired a process to him to be made in and upon his plaint aforesaid against the said Edward Bartles, according to the custom of the city aforesaid, &c. from the whole time aforesaid used and approved within the city aforesaid, upon which then and there, according to the custom of the said city, at the petition of the aforesaid J. Smith to the aforesaid T. C. then one of the sheriffs of the city aforesaid, then and there, according to the custom of the said city made, it was commanded by the aforesaid sheriff to one Samuel Coley, then one of the serjeants at mace of the said then sheriff, and a minister of the court aforesaid, that he, according to the custom of the city aforesaid, from the whole time aforesaid used and approved in the same city, should summon the aforesaid Edward Bartles to be at the then next court of our said

Plaint levied in
a plea of debt.

Precept to ser-
jeant at mace to
summon;

return thereto
 upon the inventory,
 and that garni-
 shes had in his
 hands divers
 goods property
 of defendant.

Petition to the
 sheriff, and his
 precept to attach
 goods in hands of
 garnishee, so that
 defendant
 should appear.

lord the king, before the aforesaid sheriff in the Guildhall of the aforesaid city, situate in the parish of St. Lawrence Jury of the said city, on Thursday the twenty-eighth day of March in the twenty-seventh year of the reign of the said lord the now king, according to the custom of the city aforesaid to be held, to answer to the aforesaid J. Smith in the plea of his plaint aforesaid, according to the custom of the city aforesaid, and what he the said Samuel Coley, then one of the serjeants at mace of the aforesaid sheriff, and a minister of that court, in the mean time should thereupon do to the said court of our said lord the king, to be holden before the aforesaid sheriff in his counter aforesaid, on Tuesday the twenty-sixth day of March in the twenty-seventh year aforesaid, according to the custom of the city aforesaid, should return and certify, &c.: by virtue of which said precept the aforesaid Samuel Coley, then one of the serjeants at mace of the aforesaid sheriff, and a minister of the court aforesaid afterwards, to wit, at the said court of our said lord the now king, before the said sheriff in his counter aforesaid, on the said Tuesday the twenty-sixth day of March, in the said twenty-seventh year aforesaid, according to the custom of the city aforesaid, held, returned, and certified to the court aforesaid, that the aforesaid E. Bartles had nothing within the liberty of the city aforesaid by which he could be summoned, according to the custom of the city aforesaid, neither was he found in the same city; whereupon afterwards, to wit, at the same court of our lord the now king, before the aforesaid sheriff in his said counter aforesaid, on Tuesday the twenty-sixth day of March in the twenty-seventh year aforesaid, according to the custom of the city aforesaid, &c. then held, the said Samuel Coley did return and certify to the said court of the said lord the king, before the aforesaid sheriff in his counter aforesaid, according to the custom of the city aforesaid then and there held, that the said Edward Howard then had in his hands and custody divers goods and chattels as of the proper goods and chattels of the said E. B.; and because the said J. Smith then and there petitioned to the same court, that the aforesaid E. B. by the same goods and chattels as of the proper goods and chattels of the said E. B. so in the hands and custody of the aforesaid E. Howard, being according to the custom of the city aforesaid, might be attached to answer to the said J. Smith in the plea of his plaint aforesaid; therefore, at the petition of the aforesaid J. Smith, then and there in the counter aforesaid, on the said Tuesday the twenty-sixth day of March in the twenty-seventh year aforesaid, before the aforesaid sheriff made, it was commanded by the aforesaid sheriff to the aforesaid then serjeant at mace, that he, according to the custom of the city aforesaid, should attach the aforesaid E. Bartles by the same goods and chattels in the hands and custody of the aforesaid E. Howard being, and keep back the same, so that the said E. B. should be at the same then next court of our said lord the now king, before the aforesaid sheriff in the Guildhall aforesaid, on the said Thursday the twenty-eighth day of March in the

the twenty-seventh year aforesaid, according to the custom of the city aforesaid to be holden, to answer to the said J. Smith in the plea of his aforesaid plaint, according to the custom of the city aforesaid, &c. and what the said serjeant at mace in the mean time should thereupon do to the said court of our said lord the now king, before the aforesaid sheriff in his counter aforesaid, on the said Tuesday the twenty-sixth day of March in the twenty-seventh year aforesaid, according to the custom of the aforesaid city to be holden, he should return and certify; and upon which afterwards, to wit, on the said Tuesday the twenty-sixth day of March in the twenty-seventh year aforesaid, the aforesaid Samuel Coley, then one of the serjeants at mace of the aforesaid sheriff, and a minister of the court aforesaid, returned and certified to the same court of our said lord the king, before the said sheriff in his counter aforesaid, that he, on the said Tuesday the said twenty-sixth day of March in the twenty-seventh year aforesaid, between the hours of four and five in the afternoon of the same day, according to the custom of the city aforesaid, had attached the aforesaid E. B. by divers goods and chattels as the proper goods and chattels of the aforesaid E. B. in the hands and custody of the aforesaid E. Howard being, and the same goods and chattels in his custody were by the same serjeant at mace attached and kept back, so that the aforesaid E. B. should be at the same then next court of our said lord the now king, before the aforesaid sheriff in the Guildhall aforesaid, on the said Thursday the said twenty eighth day of March in the twenty-seventh year aforesaid, according to the custom of the city aforesaid to be holden, to answer the aforesaid J. Smith in the plea of his plaint aforesaid, according to the custom of the city aforesaid, &c. as to him as above was commanded; and the same day was given then and there by the same court to the said J. Smith to be there, &c.: At which said next court, to wit, at the court of our said lord the now king, before the aforesaid sheriff in the Guildhall aforesaid, on the said Thursday the said twenty-eighth day of March in the twenty-seventh year aforesaid, according to the custom of the aforesaid city, &c. held, the aforesaid J. Smith in his own proper person appeared, and then and there put in his place Adam Calamy his attorney, against the aforesaid E. Bartles, in and upon his plaint aforesaid, according to the custom of the city aforesaid, &c. and then and there at the same court, by the aforesaid Adam Calamy his aforesaid attorney, according to the custom of the city aforesaid, offered himself against the said E. B. in and upon his plaint aforesaid, and then and there at the same court, at the petition of the said James by his attorney aforesaid to the court aforesaid, according to the custom of the city aforesaid made, the said E. B. was solemnly called and did not appear, but then and there made a first default, which said first default upon the aforesaid E. B. then and there at the said court, according to the custom of the city aforesaid, a day further was given by the same court to the aforesaid E. B. until the then next court of the said lord the king, before the aforesaid sheriff in

Return thereto.

Defendant makes default.

First default.

the Guildhall aforesaid, on Saturday the thirtieth day of March in the twenty-seventh year aforesaid, according to the custom of the city aforesaid to be holden there, &c. to answer, &c. &c. &c. according to the custom of the city aforesaid, &c. and the same day was given then and there by the same court to the aforesaid J. Smith to be there, &c.; at which said next court, &c. &c. &c. the aforesaid J. Smith, by his attorney aforesaid, according to the custom of the aforesaid city, appeared, and then and there, &c. &c. &c. (as before, shewing a second default to have been made and recorded), therefore a day further, &c. (There were two more defaults alledged to have been made in the declaration, the one on Thursday the fourth of April, twenty-seventh year aforesaid; the other, Saturday the sixth of April, twenty-seventh year aforesaid; then the declaration went on as follows): as by the record and proceedings thereof, still remaining in that court in full force, more fully appears. And the said E. Howard further saith, that before the making of the said attachment in form aforesaid made, and before the making of the said plaint of the said J. S. to wit, on the twentieth day of February A. D. 1754, one Francis Chadwicke of Liverpool did, by the order and direction of one Charles Salmon, ship in and on board a certain ship or vessel called the Alexander, whereof the said E. Howard then was and still is master, certain goods and chattels, to wit, one hundred and twenty cheeses containing a large weight, to wit, three tons and fourteen hundred weight, for and on account and risk of the said E. Bartles then of London, cheesemonger, to be delivered to him the said E. Bartles, or his order, at L. aforesaid; and which said goods and chattels, before the making of the said attachment, had been brought by the said E. Howard in his said ship or vessel, to wit, from L. in the county of Lancaster to London aforesaid, and the same, at the said time of the said attachment, were in the hands, custody, and possession of the said E. Howard undelivered to the said E. Bartles, and the same cheeses were the same goods and chattels of the said E. Bartles, upon which, or on part thereof, the said attachment was so made in the hands and custody of the said E. Howard, as mentioned in the said record and proceedings; of all which premises the said John Smith and William Palmer afterwards, and whilst the said plea was so depending in the above-mentioned court, and after the said attachment so made, and before any condemnation thereof, to wit, on the said sixth day of April A. D. 1754, at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, had notice; And thereupon afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said E. Howard, at the special instance and request of the said J. Smith and W. Palmer, would lodge and deposit the said one hundred and twenty cheeses in the hands of the said J. Smith and W. Palmer, subject to the said attachment, they the said J. Smith and W. Palmer undertook, &c. the said E. Howard to pay the sum of forty-four pounds to the said James Smith, or otherwise to

Second default.

Third and fourth default.

Plaintiff master of a ship in which 120 cheeses were shipped by F. C. on the account and risk of original defendant (now plaintiff) which were attached in hands of plaintiff.

Q^y. Should not these goods be averred to be in the city?

In consideration that plaintiff would lodge cheeses subject to attachment, defendants promised to suffer levy on so many, &c.

suffer

suffer him to levy and take so many of the said cheefes as upon an appraisement should amount unto the said sum of forty-four pounds so soon as the same should be legally condemned in the said court; And the said E. Howard in fact saith, that he, giving credit to the said promise and undertaking of the said J. Smith and W. Palmer, he the said E. Howard did afterwards, so wit, on the same day and year last aforesaid, at the said instance of the said J. Smith and W. Palmer, at London aforesaid, in the parish and ward aforesaid, lodge and deposit the said one hundred and twenty cheefes in the hands of the said J. Smith and W. Palmer, subject to the said attachment; and the said J. Smith and W. Palmer then and there accepted of the same accordingly; and that such proceedings were afterwards had in the aforesaid court before the said one sheriff of the said city of London, in the said plea of the aforesaid plaint of the said Walter Ainsley; that afterwards, and after the said four defaults of the said E. Bartles so as aforesaid on the said E. Bartles, by virtue of the said plaint in and by the aforesaid court recorded as aforesaid, to wit, at the court of our lord the now king, before the said Thomas Chitty esquire, then one of the sheriffs of the said city, in the Guildhall of the said city, on Thursday the twenty-ninth day of April in the twenty-seventh year aforesaid, according to the custom of the city aforesaid held, it was commanded by that same court to the aforesaid Samuel Coley, then one of the serjeants at mace of the said sheriff, and a minister of the court aforesaid, that he, according to the custom of the city aforesaid, should forewarn and give notice to the said E. Howard so be at the then next court of our said lord the king, before the aforesaid sheriff in the Guildhall aforesaid, on Saturday the twenty-seventh day of April in the twenty-seventh year aforesaid, to be held, to shew and demonstrate if he had or knew any thing to say for himself why the aforesaid James Smith ought not to have his appraisement against him for part, to wit, of sixty cheefes as of the proper goods and chattels of the said E. Bartles being before attached and kept back, &c. in the hands and custody of the aforesaid E. Howard by virtue of the aforesaid plaint, if it should seem expedient to him, &c. and that what the serjeant at mace of the aforesaid then sheriff, and minister of the court aforesaid, in the mean time thereupon should do to the said court of the said lord the king, before the aforesaid then sheriff in the Guildhall aforesaid, on the said Saturday the twenty-seventh day of April in the twenty-seventh year aforesaid, according to the custom of the city aforesaid to be holden, he should return and certify, &c.; at which said next court, to wit, at the said court of our said lord the now king, before the aforesaid then sheriff in the Guildhall aforesaid, on the said Saturday the twenty-seventh day of April in the twenty-seventh year aforesaid, according to the custom of the city aforesaid then held, the same serjeant at mace returned and certified to the same court his precept aforesaid to him directed, that he according to the custom of the city aforesaid, had warned and given notice to the aforesaid E. Howard to be at that same next court, to shew and demonstrate if

Precept to serjeant at mace to forewarn plaintiff, to shew why J. S. should not have an appraisement of cheefes.

Return thereto.

any

Defendant (the
now plaintiff)
made default.

Judgment of
appraisement to
44l. and that
goods should be
delivered in sa-
tisfaction, or
garnishee should
find pledges to
restore or render
himself to pri-
son.

Pledges found.

any thing for himself he should have or know to say why the afore-
said James Smith ought not to have an appraisement of the afore-
said goods and chattels as the proper goods and chattels of him the
said E. Bartles in the hands and custody of the afore said E. Howard,
by virtue of the plaint afore said, before attached and kept back, as
to him above was commanded: And then and there at the said
court of our said lord the king, before the afore said then sheriff in
the Guildhall afore said, on the Saturday the twenty-seventh day of
April in the twenty-seventh year afore said, according to the cus-
tom of the city afore said held, the afore said E. Howard was so-
lemnly called, and did not appear, but default made; and there-
upon then and there, at the said court of our said lord the king,
before the afore said then sheriff in the Guildhall afore said, on the
Saturday the twenty-seventh day of April in the twenty-seventh
year afore said held, it was considered by the same court that there
should be an appraisement of the afore said sixty cheefes so as afore-
said attached and kept back in the hands and custody of the afore-
said E. Howard: and thereupon afterwards, to wit, at a court of
our said lord the king, before the afore said then sheriff in the
Guildhall afore said, on Thursday the second day of May in the
twenty-seventh year afore said, according to the custom of the city
afore said, the afore said sixty cheefes, so as afore said attached and
kept back, were appraised to forty-four pounds in the presence of
John Wood, then one of the serjeants at mace of the afore said then
sheriff, by the oaths of Henry Barnes and A. B. then citizens
of the city afore said; and the same goods and chattels, so as afore-
said attached and appraised by the same court, were adjudged to
be delivered to the afore said J. S. in satisfaction of his afore said
debt, on the said James Smith his finding pledges to render and
restore the afore said goods and chattels so attached, appraised, and
condemned, or the value of them, as the goods and chattels so as
afore said in the hands and custody of the afore said E. Howard
attached, kept back, and condemned, if within one year and a
day then next following, that E. Bartles should come unto the
afore said court, and the debt afore said, in the plaint afore said men-
tioned, disprove, or himself of that debt in any manner discharge,
or himself to some prison of the said lord the king within the li-
berty of the city afore said being, should render, ready to plead
with the afore said James Smith in and upon his plaint afore said,
according to the custom of the city afore said. Whereupon after-
wards, to wit, at the court of our said lord the now king, before
the afore said then sheriff in his counter afore said, on Saturday the
fourth day of May in the twenty-seventh year afore said, according
to the custom of the said city then held, the afore said James Smith
came into the said court, and then and there, according to the
custom of the city afore said, and tenor of the afore said judgment,
found pledges, to wit, Thomas Fossick of Bishopsgate-street,
London, afore said, cheesemonger, and William Calvert of Thames-
street, London, cheesemonger, citizens of the city afore-
said, to render and restore the afore said goods and chattels, or the
value

value of them, as the goods and chattels aforesaid, in the hands and custody of the aforesaid E. Howard, attached, kept back, and condemned, if within one year and a day then next following, the said E. Bartles should come into the said court, and the debt aforesaid, in the plaint mentioned, disprove, or himself in any other manner discharge of that debt, or himself to some prison of our said lord the king within the liberty of the city aforesaid being, should render, ready to plead with the aforesaid James Smith in and upon his plaint aforesaid, according to the custom of the city aforesaid, as by the record and proceedings thereof still remaining in that court more fully appears; which said judgment so given in form aforesaid upon the said James Smith, his so finding the said pledges in form aforesaid, and there, according to the custom of the said city, was a legal condemnation of the said goods and chattels, as to the said forty-four pounds in the hands and custody of the said E. Howard, according to the said custom; of all which premises the said John Smith and W. Palmer afterwards, to wit, on the same day and year aforesaid, at London aforesaid, in, &c. aforesaid had notice; Yet the said J. Smith and W. Palmer, not regarding, &c. but contriving, &c. craftily and subtilly, &c. have not, nor hath either of them yet paid to the said E. Howard the said forty-four pounds or any part thereof, or suffered him to levy or take the said sixty cheefes so appraised as aforesaid, or any part thereof (although to do this the said John Smith and W. Palmer afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, were requested by the said E. Howard), but they to do this have, and each of them hath hitherto wholly failed and made default and refused, contrary to the said promise and undertaking of the said J. Smith and W. Palmer so made in that behalf as aforesaid; by means whereof the said E. Howard afterwards, to wit, on the first day of February A.D. 1755, at L. aforesaid, in, &c. aforesaid, to avoid his being imprisoned by virtue of the said judgment, was forced to pay, and did pay to the said James Smith, with and out of his the said E. Howard's own proper money, the said forty-four pounds in satisfaction and discharge of himself of and from the said judgment and attachment, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas before the making of the promise and undertaking hereafter next mentioned of the said John Smith and W. Palmer, to wit, on the twentieth day of February A. D. 1754, the said Francis Chadwicke did, by the order and direction of the said Charles Salmon, ship in and on board the said ship or vessel called the Alexander, whereof the said E. Howard then was and still is master, certain goods and chattels, to wit, one hundred and twenty cheefes, containing three tons and fourteen hundred weight, and on the account and risk of the said E. Bartles, then of London, cheefemonger, to be delivered to him the said E. Bartles, or his order, at London aforesaid; and which said goods and chattels, before the making of the said promise and undertaking of the said J. Smith and W. Palmer hereafter next mentioned,

Averment that
condemnation
was legal.

Breach.

ad Court, omit-
ting the custom.

mentioned, had been brought by the said E. Howard in his said ship or vessel from Liverpool, in the county of L. to London aforesaid, and the same at the said time of the making of the said promise and undertaking of the said John Smith and W. Palmer hereafter next mentioned, were in the hands and possession of the said E. Howard undelivered to the said E. Bartles or his order. And whereas also before the making of the said promise and undertaking of the said J. Smith and W. Palmer hereafter next mentioned, and whilst the said goods and chattels so were in the hands and custody of him the said E. Howard as last aforesaid, the said E. Bartles was indebted unto him the said James Smith in the sum of forty-four pounds and the said sum of forty-four pounds so due and owing from the said E. Bartles to the said James Smith being wholly unpaid and unsatisfied to the said James Smith, he the said James Smith had before the making of the said promise and undertaking of the said J. Smith and W. Palmer hereafter next mentioned, to wit, on the twenty-third day of March in the twenty-seventh year of the reign of our lord the now king, according to the custom of the city of London, from time immemorial there used and approved of, caused to be made an attachment on the said goods and chattels in the hands and possession of the said E. Howard in the court of our said lord the now king, holden before Thomas Chitty esquire, then one of the sheriffs of the city of London aforesaid, in his counter, situate in the parish of St. Mildred the Virgin, in the Poultry of the said city, in the ward of Cheap, commonly called the Sheriffs Court of the city of London, holden for the Poultry Compter, and which would soon after the making of the said promise and undertaking of the said John Smith and W. Palmer be condemned; of all which said premises the said J. Smith and W. Palmer afterwards, and before the making of their promise and undertaking hereafter next mentioned, to wit, on the sixth day of April in the twenty-seventh year aforesaid, at L. aforesaid, in, &c. had notice: And thereupon afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, in consideration that the said E. Howard, at the special instance and request of the said J. Smith and W. Palmer, would lodge and deposit the said one hundred and twenty cheeses in the hands of the said J. Smith and W. Palmer, subject to the said attachment, they the said J. Smith and W. Palmer undertook, and then and there faithfully promised the said E. Howard to pay the said sum of forty-four pounds to the said James Smith, or otherwise to suffer him to levy and take so many of the said cheeses as upon an appraisement should amount unto the said sum of forty-four pounds, so soon as the same should be legally condemned in the said court; And the said E. Howard in fact saith, that he giving credit to the said last-mentioned promise and undertaking of the said J. Smith and W. Palmer, he the said E. Howard did afterwards, to wit, on the same day and year last aforesaid, at the said instance of the said J. Smith and W. Palmer, at L. aforesaid, in, &c. aforesaid, lodge and deposit the said one hundred and twenty cheeses in the hands of the said J. Smith and W. Palmer, subject to the said attachment; and

the said John Smith and W. Palmer then and there accepted of the same accordingly; and that the said goods and chattels afterwards, to wit, on the second day of May in the twenty-seventh year aforesaid in the said court, were legally condemned; of all which said premises the said J. Smith and W. Palmer afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, had notice: Yet the said J. Smith and W. Palmer not regarding, &c. but contriving, &c. craftily, &c. have not, nor hath either of them, yet paid the said James Smith the forty-four pounds, or any part thereof, or suffered him to levy or take so many of the said cheeses as on an appraisement would amount unto the said sum of forty-four pounds, or any parts thereof (although to do this the said J. Smith and W. Palmer afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, were requested by the said E. Howard), but they to do this have, and each of them hath hitherto wholly failed and made default and refused, contrary to the said promise and undertaking of the said J. Smith and W. Palmer so made in that behalf as aforesaid; by means whereof the said E. Howard afterwards, to wit, on the first day of February A. D. 1755, at L. aforesaid, in, &c. aforesaid, in discharge of himself of and from the premises aforesaid, was forced to pay, and did pay to the said James Smith, with and out of the said E. Howard's own proper money, the said forty-four pounds in satisfaction and discharge of himself of and from the premises aforesaid.

Breach.

See Bailees for Various Purposes, post.

LONDON, ff. Chaufe Harwood complains of William Groves, being in the custody of, &c.; for that whereas before the making of the promise and undertaking of the said W. G. hereafter next mentioned, to wit, on the thirteenth day of January A. D. 1747, one A. Gardiner esquire, at London aforesaid, in the parish of St. Mary le Bow in the ward of Cheap, delivered into the hands and custody of the said plaintiff as the agent, before then duly appointed for the disposing of, selling, and dividing of a certain prize or certain prizes, before then during the now late war taken by one of his Majesty's ships of war called the *A.* (he the said Chaufe being such agent as aforesaid), a certain bill of exchange in writing, before then drawn and made by one G. Wakeman, and directed to Richard Salvey, merchant in London, bearing date at Cyprus, the thirteenth day of July in A. D. 1747; and whereby the said G. W. required the said R. S. at forty-five days sight of that his second bill of exchange, (first or third not paid,) to pay unto the order of the honourable Henry M. esquire eighty-one pounds fifteen shillings and two pence sterling for value received of him, placing the same to account, as by advice from the said G. W.; and which said bill of exchange, before the time of the said delivery thereof to the said plaintiff, *he would deliver said bill to defendant, he promised to return him that part of the bill paid when he (defendant) received the money on the bill.*

Declaration, plaintiff had in his custody a bill of exchange drawn on A. which was for him to pay as prize-money to J. B. and the representatives of H. M. He paid a third-part share of it to J. B. before he had received the money due on the bill, and defendant pretended to be agent to the representatives of H. M. who were to have the residue of said prize-money; and in consideration plain-

had

(i) ad Count.
"divide"

had been made out for the remitting to London of the sum of eighty-one pounds fifteen shillings and two-pence sterling, being one-eighth part of a prize taken by the said ship; and which said eighth part, at the said time of the delivery of the said bill to the said plaintiff, belonged as followeth, to wit, two equal third parts thereof to the proper representative or representatives of the said H. M. who was then deceased, but who at the time of the taking of the said prize was a vice-admiral of his majesty's fleet, and one other equal third-part thereof to the honourable J. Bing esquire, who at the time of the taking of the said prize was a rear admiral of his majesty's fleet, as the respective shares of the said H. M. and J. B. of the said prize, thus being entitled to the said eighth part of the said prize in the proportions aforesaid; and the said bill was so delivered to the said plaintiff as such agent as aforesaid, with intent that the said plaintiff might receive the money therein mentioned, and (1) *pay over* the same to the said representative or representatives of the said H. M. and to the said J. B. in the proportions aforesaid; and the said plaintiff, before the making of the said promise and undertaking of the said defendant hereafter next mentioned, had paid and satisfied the said J. B. his share of the said money, and accounted with him for the same, but had not received the money mentioned in the said bill, or any part thereof; and thereupon, on the day of A. D. , at L. &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, who then was, or pretended to be, concerned as an agent for the proper representative or representatives of the said H. M. deceased, would deliver up the said bill to the said defendant, that said defendant might receive, or cause to be received, the said sum of money therein mentioned, of the said R. S. the person on whom the said bill was drawn, and who before then accepted the said bill, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would, whenever the said bill should be paid by the said R. S. pay to the said plaintiff one equal third part of the said eighty-one pounds fifteen shillings and two-pence mentioned in the said bill, which he the said plaintiff had so paid and satisfied to the said J. B.: And the said plaintiff in fact faith, that he the said plaintiff, giving credit to the said promise and undertaking of the said defendant, he the said plaintiff afterwards, to wit, on the same day and year last aforesaid, at L. &c. aforesaid, at the said instance of the said defendant, did deliver the said bill to the said defendant, that the said defendant might receive, or cause to be received, the said sum of money therein mentioned, of the said R. S. and that the said R. S. afterwards, to wit, on the day of A. D. , at L. aforesaid, duly took up and paid the said bill; of all which said premises the said defendant then and there had notice: Yet the said defendant, not regarding, &c. (Common conclusion for the said one equal third-part of the said eighty-one pounds fifteen shillings and two-pence. Add another Count like first, only leaving out what is in *Italic*, and substituting what is

in the margin.) And whereas plaintiff, &c. (shew him only possessed of another bill (which set out), which before then had been delivered to the said plaintiff in trust, as to two equal third-parts thereof, shew the proportions aforesaid, and that plaintiff had paid and satisfied Byng's share as before, and then shew defendant's promise as aforesaid, and the rest as before. Counts for money had and received, laid out, &c. lent, &c.; and the common conclusion.)

See Bailees for Various Purposes, post.

MIDDLESEX, ff. T. N. gent. one of the attornies of the court of our lord the now king, before the king himself, present here in court in his proper person, according to the liberties and privileges of the said court for such attornies of the same court from time immemorial used and approved in the said court, complains of J. T. for that whereas the said defendant, on, &c. at Westminster in the county aforesaid, in consideration that the said plaintiff had delivered to him two guineas, undertook, and then and there faithfully promised to the said plaintiff to give the said two guineas to one T. F. at the Dark House in Dark-house Lane, London, on the same day: Yet the said defendant, not regarding his said promise, &c. did not deliver or give the said two guineas to the said T. F. according to his said undertaking; by reason whereof the said plaintiff, for want of the said two guineas being delivered to the said T. F. as aforesaid, could not proceed to the trial of a cause then depending in the said court of the said lord the king here, before the king himself, between one R. D. plaintiff and one W. B. defendant, wherein the said plaintiff was attorney for the said R. D. the plaintiff; and, for the said plaintiff's not having proceeded to the trial of the said cause, afterwards, to wit, on, &c. in the year aforesaid, the said court of the said lord the king, before, &c. granted a rule to the said R. D. for an attachment against the said plaintiff afterwards, to wit, &c. in the year aforesaid, at W. aforesaid, was obliged to pay, and then and there did pay to the said R. D. forty pounds: whereupon the said plaintiff saith that he is injured, and hath sustained damages to the value of one hundred pounds; and therefore he brings his suit, &c. (Pledge, &c.) *Drawn by MR. WARREN.*

See Assumpsit against Bailees for Various Purposes.

MIDDLESEX, to wit. J. R. complains of T. S. being, &c.; for that whereas, on the tenth day of April 1785, at Westminster in the county aforesaid, in consideration that the said John, at the special instance and request of the said T. would buy of the said T. a certain large quantity of hay, to wit, fifty-seven loads of hay at and after the rate or price of two pounds four shillings of, &c. by the load for every load of such hay to be therefore paid plaintiff had occasion for, against defendant who had delivered part, for refusing to deliver the remainder.

by

Breach.

3d Count, hay
bargained and
sold, to be de-
livered in such
proportions, &c.

by the said Thomas, he the said Thomas (assumpsit), &c. to deliver the said hay to the said John from time to time in such portions and quantities as he the said J. should have occasion for and need of the same, whenever he the said Thomas should be thereunto afterwards requested: And the said John in fact says, that he, relying on the said promise and undertaking of the said Thomas, and in hopes of the faithful performance thereof, afterwards, to wit, on, &c. at, &c. did buy of him the said T. the said hay at and after the said rate or price of two pounds four shillings by the load for every part thereof as aforesaid: And the said T. in fact further says, that although he the said T. in pursuance of his said promise and undertaking so by him made as aforesaid, hath delivered to the said John a certain part or portion of the said hay; to wit, twenty loads of the said hay; and although he the said J. hath at all times hitherto been, and still is ready and willing to pay, and still is desirous of paying the said T. for the said hay so bought of him the said Thomas as aforesaid: Yet the said T. not further regarding, &c. but contriving, &c. hath not (although the said J. hath had and still has great occasion for and need of the residue of the said hay; and although he the said T. was afterwards, to wit, on the first of July 1785, and oftentimes since, at Westminster aforesaid, requested by the said J. to deliver to the said J. the residue of the said hay) yet delivered the residue of the said hay, or any part thereof, to the said J. but to deliver the said residue of the said hay, or any part thereof, he the said T. hath hitherto wholly refused, and still doth refuse; by reason whereof the said J. hath been compelled and obliged to buy another large quantity of other hay, to answer his occasions and use, to wit, twenty loads of other hay at a great price, to wit, at the price of four pounds of, &c. to wit, at, &c. (2d Count, in consideration he had bought, &c.) And whereas also afterwards, to wit, on the said tenth of April 1785, at, &c. the said T. bargained and sold to the said J. and the said J. bought of the said T. a certain other large quantity of hay, to wit, four other loads of hay at and after the rate or price of two pounds four shillings by the load thereof, to be therefore paid by the said John to the said Thomas. And whereas also afterwards, to wit, on, &c. at, &c. it was agreed by the said John and the said Thomas in manner and form following, that is to say, that he the said T. should and would deliver to the said J. the said hay last mentioned, in such portions and quantities as he the said J. should from time to time have occasion for and need of, whenever he the said T. should be thereunto afterwards requested, he the said J. paying to the said T. for the said last mentioned hay so bargained and sold, and so to be delivered as last aforesaid, at and after the aforesaid rate or price of two pounds four shillings by the load, for every load thereof upon delivery thereof, in such portions and quantities aforesaid, as he the said J. should have occasion for and need of, and request to be delivered to him by the said T. as last aforesaid; and it being so agreed by the said J. and T. as last aforesaid, he the said

said T. afterwards, to wit, on, &c. at, &c. in consideration that the said J. at the like special instance and request of the said T. had then and there faithfully promised the said T. to perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled, undertook, and to the said J. then and there faithfully promised to perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled as to the delivery of the said last mentioned hay: And the said John in fact says, that although the said T. in pursuance of the said agreement, and of his said promise and undertaking so by him made as last aforesaid, hath delivered to the said J. at his request, a certain part or portion of the said last mentioned hay, to wit, two other loads of the said hay last mentioned; and although the said J. at all times hitherto, hath been and still is ready and willing to pay, and is desirous of paying the said T. for the said last mentioned hay so bought of him the said T. at and after the rate or price last aforesaid, for such portions and quantities as should be delivered to him as last aforesaid, upon the delivery thereof as last aforesaid; and although he the said J. hath had occasion for and need of the residue of the said last mentioned hay, and hath often times since requested the said T. to deliver to him the residue of the said hay so bargained and sold by the said T. to the said J. as last aforesaid: Yet the said T. not further regarding, &c. but contriving, &c. hath not yet delivered the residue of the said hay last mentioned, or any part thereof, to the said J. but to deliver the residue thereof, or any part thereof, to the said J. he the said T. hath altogether refused, and still doth refuse, to wit, at, &c.; by reason whereof the said John hath been necessitated, obliged, and compelled to buy another large quantity of hay to answer his occasions and use, to wit, twenty loads of hay, at a greater and more advanced price than the said hay so bargained and sold as last aforesaid, to wit, at and after the rate or price of four pounds per load of like, &c. to wit, at, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said J. at the like, &c. had then and there bought of him the said T. a certain other large quantity of hay at and after the rate of other two pounds four shillings by the load for every load thereof, he the said T. assumpsit, &c. to deliver the said last mentioned hay so bought of him the said J. as last aforesaid, whenever afterwards he the said T. should be thereto requested: And the said J. in fact further says, that although he the said J. did afterwards, to wit, on the first of May 1785, and on divers other days and times between that day and the day of exhibiting, &c. request the said T. to deliver the said hay last mentioned to him the said J.: Yet the said T. not regarding, &c. hath not yet delivered to the said J. the said last mentioned hay, but so to do hath hitherto altogether refused, and still doth refuse, to wit, at, &c.

Drawn by MR. CROMPTON.

LONDON, to wit. J. M. and C. S. the younger, com-
 plain of W. W.; for that whereas before and at the time of the
 loan of money for the freight and hire of plaintiff's ship to Jamaica, according to his undertaking.

VOL. II.

N

making

Declaration against defendant for not paying a

making of the promise and undertaking herein after next mentioned, to wit, on the seventh of November 1782, the said J. and C. were possessed of a certain ship or vessel called the R. whereof was master one James Miller, then lying at anchor in the river Thames at the port of L. whereof the said W. had notice; and thereupon afterwards, to wit, on the seventh of November 1782, in consideration that the said James and Charles, at the special instance and request of the said W. would let the said ship or vessel of them the said James and Charles, to freight to the said W. for a certain voyage from the port of Southampton to the island of Jamaica in the West Indies, and would proceed with the said ship or vessel in fourteen days from the port of London aforesaid to the port of Southampton aforesaid, and there take on board the said ship or vessel the goods and merchandizes of the said W. for the said voyage, and safely and securely carry and conduct the said goods and merchandizes in the said ship or vessel (the perils and dangers of the seas excepted), from the port of Southampton aforesaid to the island of Jamaica aforesaid, and there deliver the same to the order of the said William, he the said William (assumpsit) to pay them for the said freight and hire of the said ship or vessel the sum of pounds, of, &c. if the said ship or vessel should fail with convoy during the said voyage, or a proportionable allowance over and above the said sum of pounds, if the said ship or vessel should proceed on the said voyage without convoy, whenever he the said William should be thereto afterwards requested: And the said James and Charles in fact say, that they, confiding in the said promise and undertaking of the said William, afterwards, to wit, on, &c. at, &c. did let the said ship or vessel to freight to the said William, and afterwards, and within the space of fourteen days then next following, did proceed with the said ship or vessel from the port of London aforesaid to the port of S. aforesaid, and did there take on board the said ship or vessel the said goods and merchandizes of the said William for the said voyage: And the said James and Charles in fact further say, that the said ship or vessel, with the said goods and merchandizes so loaded on board her as aforesaid, afterwards, to wit, on the tenth of February 1783, set sail and departed on her said voyage with convoy from the port of Southampton aforesaid to the island of Jamaica aforesaid, and afterwards, to wit, on the first of May in the year last aforesaid, arrived there with the said goods and merchandizes on board her in safety as aforesaid; which said goods and merchandizes so laden on board the said ship or vessel as aforesaid, afterwards, to wit, on the same day and year last aforesaid, were safely and securely delivered at the said island of Jamaica as aforesaid to the order of the said William, whereof the said William afterwards, to wit, on the first of August 1783, at, &c. had notice: and by reason thereof the said William became liable to pay, and ought to have paid to the said J. and C. the said sum of pounds, according to the said promise and undertaking in that behalf made as aforesaid.

(ad Count for the freight and carriage of goods; and *quantum meruit*; money had and received; and an account stated; breach.)

Drawn by MR. CROMPTON.

See Assumpsit Special by and against Masters and Owners of Ships, post.

LANCASHIRE, to wit. R. M. complains of W. W. gent. Declaration against defendant an attorney, for taking such little care of a horse he hired of plaintiff to ride, that it was strangled in a stable into which defendant put him.

one, &c.; for that whereas on the thirteenth of August 1788, at, &c. in consideration that he the said R. had, at the special instance and request of the said W. then and there let to hire and delivered to him the said W. a certain gelding of and belonging to the said plaintiff of great value, to wit, of the value of twenty pounds of, &c. to be by him the said W. ridden and used upon a certain journey which he was then and there about and going to make, the said W. undertook, and to the said R. then and there faithfully promised, that he the said W. would take due and proper care of the said gelding during the said journey, and would return and redeliver the said gelding to the said R. at the end and expiration of the said journey: (1) Nevertheless, defendant not regarding, &c. but contriving, &c. he the said W. took such improper and so little and such bad care of the said gelding of him the said R. that the said gelding, by and through the mere carelessness, remissness, negligence, mismanagement, and default of him the said W. and his servants in that behalf, that the said gelding afterwards, to wit, on, &c. was strangled and killed in a certain stable or out-house in which the said gelding was caused to be put and placed by the said W. at, &c. contrary to the form and effect of the said promise and undertaking of him the said W. so by him made as aforesaid. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said R. at the like special instance and request of the said W. had let to hire and delivered to him the said W. a certain other gelding of and belonging to him the said R. of other great value, to wit, of the value of other twenty pounds of, &c. to be by him the said W. ridden and used for the aforesaid day, on which the same was so let to hire and delivered to him as aforesaid and no longer, he the said W. undertook, and to the said R. then and there faithfully promised, that he the said W. would take due and proper care of the said last mentioned gelding, during the said time the same was in his possession, and would return and redeliver the said last mentioned gelding to the said plaintiff at the end and expiration of the said time the said last mentioned gelding was so let to hire as last aforesaid: (2) Nevertheless, defendant not regarding, &c. but contriving, &c. did not return or redeliver the said gelding to him the said R. at the end and expiration of the said time the said last mentioned gelding was so let to hire as last aforesaid, but kept and detained the same for a much longer time than the aforesaid time, to wit, for the space of one day afterwards; and during the time the said last mentioned gelding was so in his possession, took such improper and so little and such bad care of the said last mentioned gelding of him the said R. that the said last mentioned gelding of him the said R. by and through the mere carelessness, negligence, mis-

(1) Breach and negligence.

ad Count, against defendant who hired plaintiff's horse for a day, for detaining him longer, and during that time taking such little care of him that he was strangled.

(2) Breach

3d Count, for
redelivering to
plaintiff a saddle
and bridle which
plaintiff lent him
to go on a jour-
ney.

Attach

mismanagement, and default of him the said W. and his servants in that behalf, that the said last mentioned gelding afterwards, to wit, on, &c. was strangled and killed, to wit, at, &c. contrary to the form and effect of the said last mentioned promise and undertaking of the said W. so by him made as aforesaid. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff had, at the like special instance and request of him the said W. delivered to him the said W. a certain saddle and a certain bridle of and belonging to him the said R. of great value, &c. to be by him the said W. used upon a certain gelding on which the said W. was then and there going to ride, he the said W. undertook, and to the said plaintiff then and there faithfully promised to return and redeliver to him the said saddle and bridle: Nevertheless, defendant not regarding, &c. but contriving, &c. hath not, although a long space of time hath elapsed since the delivery of the said saddle and bridle to the said W. returned or redelivered to him the said R. the said saddle or bridle, or either of them, although so to do afterwards, to wit, on the first of November 1788, and oftentimes since, at, &c. was requested, but to return or redeliver to the said R. the said saddle or bridle, or either of them, he the said W. hath hitherto wholly refused, and still doth refuse, to wit, at, &c. contrary, &c. (Common Counts, &c.)

Drawn by MR. GRAHAM.

Declaration against defendant for not accepting and paying for the residue of thirty quarters of barley, b-r. gained and sold by plaintiff to him by a sample.

LINCOLNSHIRE, to wit. A. H. complains of T. W. being, &c. for that whereas, to wit, on the fifth of April 1788, at, &c. in consideration that the said A. at the special instance and request of the said Thomas, had bargained and sold to the said Thomas a large quantity, to wit, thirty quarters of barley of him the said A. according to a certain sample then produced and delivered to the said T. at and after a large rate, price, or sum of money, to wit, for so much of the said thirty quarters of barley as he the said A. should deliver, and cause to be delivered, to the said Thomas, screened and chopped, at and after the rate, price, or sum of twenty shillings for each and every quarter thereof, and for so much of the said thirty quarters of barley as he the said A. should deliver and cause to be delivered to the said Thomas, screened only, and not chopped, at and after the rate, price, or sum of nineteen shillings for each and every quarter thereof to be therefore paid by the said Thomas to the said A. and had then and there agreed to deliver the same at Grantham aforesaid, in the said county, according to the directions of the said T. he the said T. undertook, and to the said A. then and there faithfully promised to accept the said barley, and to pay for the same at and after the rate, price, or sum aforesaid: And the said plaintiff avers, that he the said plaintiff afterwards, to wit, on, &c. at, &c. did deliver and caused to be delivered to the said Thomas, divers, to wit, ten quarters of the said thirty quarters of barley, according to the sample so shewn and delivered as aforesaid, screened and not chopped; and the said Thomas thereupon then and there accepted the same:

And

And the said plaintiff in fact further says, that he the said plaintiff always, from the time of the making of the said promise and undertaking hitherto, hath been ready and willing, and afterwards, to wit, on, &c. at, &c. offered to deliver to the said Thomas twenty quarters of barley, residue of the said thirty quarters of barley, according to the said sample so shewn and delivered to the said Thomas as aforesaid, screened and chopped, and then and there requested the said defendant to accept the same, and pay as well for the said barley so delivered as aforesaid, as for the said barley so offered to be delivered as aforesaid, at and after the rate and price aforesaid, amounting in the whole to a large sum of money, to wit, the sum of twenty-nine pounds of lawful money of Great Britain: Yet the said defendant, not regarding, &c. but contriving, &c. did not then, or at any other time or times whatsoever, before or afterwards (1), accept the said twenty quarters of barley, residue of the said thirty quarters of barley so screened and chopped as aforesaid, or any part thereof, or pay to the said plaintiff the said sum of twenty-nine pounds, the same being the price of the said thirty quarters of barley, at and after the rate and price aforesaid, or any part thereof, or the sum of nine pounds, being the price of the said ten quarters of barley so delivered to and accepted by him the said plaintiff as aforesaid, or any part thereof, although often requested so to do, but to do this he the said defendant hath hitherto wholly failed and refused, and therein made default, contrary to the form and effect of the said promise and undertaking so by him made as aforesaid. And whereas, &c. 2d Count same as the first, only omitting the mention of the sample, and that the barley was to be delivered at Grantham. Add the common Counts.)

Drawn by MR. GRAHAM,

(1) Vide Clayton v. Andrews,
2 Burr. 2101.

LONDON, to wit. W. G. complains of J. W. being, &c.; for that whereas, before and at the time of the making of the promises and undertakings herein after mentioned, the said W. was purser of a certain ship or vessel called the London. And whereas also the said John, before and at the time of the making of the promises and undertakings herein after mentioned, was captain and commander of a certain other ship or vessel called the S, which said ships, whereof the said W. and J. were so respectively purser and commander at the time of the making the said promises and undertakings herein after mentioned, were lying and being in parts beyond the seas, to wit, at Batavia, and were about to sail to Canton in China, in the service of the united company of merchants trading to the East Indies. And whereas also the said W. and J. being so respectively purser and commander of the said respective ships the L. and S. so lying and being at Batavia aforesaid, ship came on board defendant's ship, and would pay to defendant at Canton 5000 star pagodas, defendant promised to lend plaintiff 10,000 star pagodas to buy the tin, and to carry the tin to Canton, and there *would deliver* to plaintiff half thereof to his sole use, against defendant (after shewing perjury of plaintiff's behalf) for refusing to deliver the tin to him at Canton.

Declaration on an agreement between plaintiff the purser of one Indiaman, and defendant the commander of another, both at Batavia and bound to Canton, that in consideration plaintiff would at Batavia buy as much tin as should come to 10,000 star pagodas, and would

and so bound and about to sail to Canton in China as aforesaid, on the fourth of December 1783, at Batavia aforesaid, that is to say, at London aforesaid, to wit, in the parish of St. Mary le Bow in the ward of Cheap, in consideration that the said William, at the special instance and request of the said J. would purchase and procure so much tin as could be purchased and procured for ten thousand star pagodas, or thereabouts, more or less, and would ship or cause to be shipped on board of the said ship of the said J. called the S. the same, and would upon the safe arrival of the said ship of the said J. and of the said W. at Canton in China aforesaid, to which place they were respectively about to sail and go as aforesaid, pay to the said J. the moiety or one-half part of the said pagodas, or thereabouts, more or less, as the same should be, at the rate of exchange that they might be at the time of the arrival of the said W. and J. at Canton aforesaid, he the said J. undertook, and to the said W. then and there faithfully promised to lend and advance to the said W. the said ten thousand star pagodas, more or less, to pay for the said tin, and to carry and convey the said tin so to be bought and purchased as aforesaid, and to be shipped on board the said ship of the said John to Canton aforesaid, and that one-half of the said tin should be the share of and belong to the said W.; and that upon the safe arrival of the said ship Sandwich in the river of Canton, that he the said J. would deliver or cause to be delivered to the said W. for his sole use and benefit, such moiety of the said tin so to be bought as aforesaid, free of freight or any other charges, and would in every respect be accountable to the said William for the said moiety: And the said William in fact says, that he, relying on the promise and undertaking of the said J. and in hopes of his lawful performance thereof, afterwards, to wit, on the same day and year aforesaid, at Batavia aforesaid, that is to say, at, &c. did purchase and procure as large a quantity of tin as the said W. could at that time purchase and procure for ten thousand star pagodas, or thereabouts, more or less, that is to say, the said W. did then and there purchase and procure one thousand parcels of tin at and for ten thousand three hundred and forty-four star pagodas, and did ship and cause to be shipped the said tin on board the said ship S. whereof the said J. was captain and commander as aforesaid; and that the said J. did then and there receive the said tin on board his said ship, and then and there did lend and advance to him the said W. the said ten thousand three hundred and forty-four star pagodas to pay for the said tin: And the said W. in fact further saith, that he the said W. and the said ship S. whereof the said J. was captain and commander as aforesaid, with the said J. and the said one thousand parcels of tin so on board thereof as aforesaid, afterwards, to wit, on the second of March 1784, arrived in safety in the river Canton in China aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid: And the said William in fact further says, that at the time of the said arrival at Canton aforesaid, and during the stay and continuance of the said W. and J. there, the rate of exchange

of star pagodas was at and after the rate of one hundred and fifty-five head dollars for one hundred star pagodas, and no more: And the said William in fact further saith, the value of five thousand one hundred and seventy-two star pagodas, being the moiety or half part of the said ten thousand three hundred and forty-four star pagodas at the said rate of exchange of one hundred and fifty-five head dollars for one hundred star pagodas at Canton aforesaid, amounting to the sum of pounds of, &c. that is to say, at London, &c.: And the said William in fact further says, that he the said W. at the time of the arrival of the said W. and J. at Canton as aforesaid, and from thence continually during their stay there, was ready and willing to pay, and then and there offered to pay to the said John the said value of five thousand one hundred and seventy-two star pagodas at the rate of exchange above mentioned, that is to say, at and after the rate of one hundred and fifty-five head dollars for one hundred star pagodas; and that the said W. from the time that the said William and John left and departed from Canton aforesaid, continually hitherto hath been, and still is ready and willing to pay the said sum of three thousand one hundred and sixty-one pounds four shillings and sixpence of, &c. being the amount of the value of the said five thousand one hundred and seventy-two star pagodas, at the rate of exchange aforesaid in British money, to wit, at London, &c.: Nevertheless the said J. not regarding, &c. but contriving, &c. did not, on the safe arrival of the ship S. in the river of Canton aforesaid, deliver, or cause to be delivered to the said William, the moiety or one-half part or share of the said one thousand parcels of tin so shipped on board the said ship Sandwich as aforesaid, free of freight or any other charges, or any part of the said moiety or half part of the said one thousand parcels of tin, although often requested by the said W. so to do; and although the said William was then and there, and continually hath been ready and willing to pay the value of the said five thousand one hundred and seventy-two star pagodas, at the rate of exchange that they were then at at the time of the arrival of the said W. and J. at Canton aforesaid, and then and there on the said third of March 1784, and often since, offered to pay the same to the said J. nor hath the said J. been in any manner accountable to the said W. for the said moiety or half part or share of the said tin, but to deliver the same, or cause the same to be delivered to the said W. on the arrival of the said ship Sandwich at Canton aforesaid, or at any other time since, or in anywise to account for the same to the said W. he the said J. hath hitherto wholly refused, and still doth refuse, contrary to the promise and undertaking of the said J. so by him made as aforesaid; by reason whereof the said plaintiff was not only put to great expence, trouble, and inconvenience, but was also deprived of great profits and emoluments which would otherwise have accrued to him from the sale and disposal of five hundred parcels of tin, being the moiety or half part, and being his share of the said one thousand parcels of tin at Canton aforesaid, and which said moiety or half part of the said tin

he the said William might and would have sold and disposed of for a large sum of money, to wit, for the sum of three thousand one hundred pounds of, &c. the same being the rate or price which five hundred parcels of tin then sold for at Canton aforesaid, on the arrival and during the stay of the said W. there, to wit, at London aforesaid. (2d Count like first, only stating, that in consideration plaintiff *had* bought one thousand parcels of tin for ten thousand three hundred and forty-four star pagodas lent and advanced by defendant to plaintiff for procuring, &c. then same as first, only omitting the averment that he had bought the tin: goods sold and delivered, and *quantum meruit*; money had and received; and account stated.)

Drawn by MR. CROMPTON.

See Assumpsit by and against Masters and Owners of Ships, post.

For warranting a bull sold to plaintiff by defendant to be a good buller of cows and calf-getter, when upon trial he proved to be otherwise.

WESTMORELAND, to wit. George Harrison complains of Thomas Lewis, being, &c.; for that whereas the said Thomas, on the twelfth of May 1787, at Appleby in the said county of Westmoreland, being possessed of a certain bull, and being desirous and willing to sell and dispose of the said bull, in consideration that the said George, at the special instance and request of the said Thomas, would buy the said bull of the said Thomas at and for a large price or sum, to wit, at and for the price or sum of ten guineas as and for the price or purchase of the said bull, he the said Thomas undertook, and to the said George then and there faithfully promised, that the said bull of the said Thomas was a good buller of cows and calf-getter: And the said George in fact says, that he, confiding in the said promise and undertaking of the said Thomas, afterwards, to wit, on the same day, &c. at, &c. did buy the said bull of him the said Thomas upon the terms aforesaid, and did pay to the said Thomas the said sum of ten guineas as and for the price or purchase of the said bull, he the said Thomas returning the said George the sum of two shillings and sixpence: Yet the said Thomas, contriving and fraudulently intending craftily and subtilly to deceive and injure the said George in this respect, did not regard his said promise and undertaking so by him made as aforesaid, but thereby craftily and subtilly deceived the said George in this, that the said bull, at the time of the making of the said promise and undertaking of the said Thomas, and before, was not a good buller of cows and calf-getter; but on the contrary thereof, the said bull was then and there weak and unable, and unfit to bull any cows, and was then and there a very bad calf-getter; by reason whereof the said bull became, and was and is of no use or value to the said George, to wit, at, &c. (2d Count, in consideration plaintiff would buy, &c. like the last, stating defendant's promise that the bull was *faultless as other bulls*, and a good buller of cows: 3d Count, in consideration plaintiff *had* bought; promise same as in 1st Count; common Counts; and breach.)

Drawn by MR. GRAHAM.

MIDDLE.

MIDDLESEX, *ff.* John Willis, late of, &c. was attached to answer John Fox, &c. ; for that whereas heretofore, to wit, on, &c. at, &c. in consideration that the said John Fox, at the special instance and request of the said J. W. would let to hire and deliver unto him the said J. W. a certain mare of him the said J. F. of a large value, to wit, of the value of twenty pounds of lawful money of Great Britain, to be rode and used by him the said J. W. a certain journey, to wit, from, &c. to, &c. and from thence back to, &c. and to be returned by the said J. W. unto him the said J. F. within a certain time, that is to say, on the morning of the next day, but not to exceed the middle of that day, he the said J. W. undertook, &c. the said J. F. that he the said J. W. would ride and use the said mare under such letting to hire thereof as aforesaid in a reasonable and moderate manner, and return the same unto the said J. F. by and within such time as aforesaid : and the said J. F. in fact further saith, that although he the said J. F. confiding in the said promise and undertaking of the said J. W. did after the making thereof, to wit, on, &c. at, &c. let to hire and deliver unto the said J. W. the said mare of him the said J. F. for the time and purpose aforesaid, and in good plight and condition ; and although the said J. W. then and there had and received the said mare of him the said J. F. accordingly : Yet the said J. W. contriving and fraudulently intending, &c. the said J. F. in this behalf, he the said J. W. did not, whilst he so had the said mare of the said J. F. under such letting to hire thereof as aforesaid, ride or use the same in a reasonable manner, nor return or restore the same to the said J. F. within the time limited for that purpose as aforesaid ; but on the contrary the said J. W. did not return the said mare unto the said J. F. until a long time after the time for that purpose limited as aforesaid, to wit, until the evening of the day next after the aforesaid letting to hire thereof, and whilst he so had the said mare for the purpose aforesaid, to wit, on, &c. wrongfully and deceitfully used the said mare, in going and performing a much greater and larger journey than the same was so let to hire for as aforesaid ; and did also then and there, in the going and making of such journey aforesaid, ride and use the said mare in so immoderate and unreasonable a manner, and took so little and such bad care of the said mare, that the said mare was thereby thrown down and became and was very much hurt, bruised, strained, and a rib-bone of the said mare became and was fractured and broken ; and the said mare, in consequence thereof, and of other the premises aforesaid, became and was and is distempered, broken down, and rendered useless and entirely spoiled ; and he the said J. F. hath laid out and expended, and been forced and obliged to lay out and expend, a large sum of money, to wit, the sum of ten pounds, in physic and farriery for the said mare, and in endeavouring to cure her, and hath lost and been deprived of the use of her, and of all benefit and advantage that would thereby have arisen and accrued to him, to wit, at, &c. &c. (2d Count, upon an undertaking to ride moderately and in a certain

Declaration for using a mare immoderately that had been let out to hire, and not returning her within a certain time agreed upon at the letting of the said mare to hire.

a certain journey, not saying where or to whom to be re-delivered; 3d as 2d, in consideration of past delivery; 4th Count, in consideration of delivery, undertaking to return within, &c. but not returning: 5th and 6th, *indebitatus assumpsit*, and *quantum meruit* for use and hire; 7th, money laid out; 8th, account stated; and common conclusion.)

V. LAWES.

Declaration,
plaintiff was
possessed of a
quantity of op-
ium, which the
defendant agreed
to buy if the
whole should be
as good as the
sample which
was shewn him,
and that it
should be
weighed off in
fourteen days;
the whole quan-
tity was as good
as the sample;
and though it
was weighed off
in fourteen days,
defendant refused
to take it.

- (1) "divers"
- (2) "other"
- (3) "like"

- (4) "further"

- (5) "like"

LONDON, *ff.* G. W. late of London, druggist, was, &c. John Towers Whiteside, in a plea of trespass on the case; and thereupon the said John Towers, by John Addison his attorney, complains; for that whereas he the said John Towers heretofore, to wit, on, &c. at, &c. bargained and sold, and caused and procured to be bargained and sold, for and on account of him the said John Towers unto the said G. who then and there bought of him the said John Towers (1) *certain packages or parcels of opium*, to wit, six (2) boxes of opium of him the said John Towers as and for merchantable opium, *and as then and there being in the whole as good as a certain package thereof then and there shewn to and seen by him the said George*, at a certain rate or price, and upon the terms following, to wit, at the rate of ten shillings and sixpence for each and every pound weight thereof, to be paid for by the said G. in ready money, upon being allowed at the rate of two pounds ten shillings per centum, or by the hundred pounds, discount, on such payment, *and to be weighed off in fourteen days*; and thereupon afterwards, to wit, on, &c. in consideration of such sale as aforesaid, and also in consideration that the said John Towers, at the (3) special instance and request of the said George, had then and there undertaken, and faithfully promised the said G. that the said opium, so bargained and sold as aforesaid, *should be weighed off and delivered to the said George within the time aforesaid, and at the rate and upon the terms of the aforesaid contract for the same, and that the same were then and there merchantable opium, and the whole thereof as good as the said package thereof which the said George had so seen as aforesaid*, he the said George undertook, and then and there faithfully promised the said John Towers to accept of and take the said opium upon the terms and according to and under such contract for the same as aforesaid, and to pay him the said John Towers for the same accordingly: and the said John Towers in fact (4) saith, that the said opium, so bargained and sold to the said George as aforesaid, at the said rate of ten shillings and sixpence for each and every pound weight thereof, after allowing and deducting thereout such discount as aforesaid, amounted to a large sum of money, to wit, the sum of four hundred pounds of (5) lawful money of Great Britain, whereof the said George afterwards, to wit, on, &c. in, &c. had notice; and that the said opium was then and there merchantable opium, *and the whole thereof as good as the said one package thereof which had been and was so seen by the said G. as aforesaid; and that although the said opium was within fourteen days from the aforesaid sale thereof, weighed off;*

and although the said John Towers was then and there, and always afterwards, ready and willing to deliver the same to the said George at the rate aforesaid, and upon the terms of the aforesaid contract for the same; and although the said George could and might then and there, and at all times since, have had and received the same accordingly; and although he the said George was then and there requested by the said John Towers to accept of and to take the said opium, and to pay him the said John Towers for the same, according to the terms of the aforesaid sale thereof: Yet the said G. not regarding, &c. but, &c. the said John Towers in this behalf, did not nor would then and there, or at any other time whatsoever, accept of, take, or pay, nor hath he as yet accepted, taken, or paid him the said John Towers for the said opium or any part thereof, according to the terms of the aforesaid sale thereof, or in any other manner whatsoever, but he the said G. so to do then and there, and always hitherto, hath wholly refused, and still refuses, contrary to the tenor and effect of his aforesaid promise in that behalf, and in breach and violation thereof. And whereas, &c. (2d Count same as first, only omitting what is in Italic and inserting what is in margin: 3d Count same as 2d, only omitting what is in Italic: 4th Count, goods bargained and sold: 5th, Money laid out, expended, paid, lent, and advanced: 6th, Money had and received; account stated; common conclusion).

V. LAWES.

LONDON, *ff.* Joseph Hardcastle and Jos. Crosby (served with process by the name of Thomas Crosby) late of London, merchants, were attached to answer unto Alexander Aubert and Charles Henry Rigaud, in a plea of trespass on the case, and thereupon the said Alexander and Charles Henry, by Henry Fothergill their attorney, complain, that whereas, before and at the time of the making of the several sales of tallow hereinafter mentioned, to wit, at L. &c. the said J. H. and J. C. exercised and carried on the trade and business of merchants, and the said Alexander and Charles Henry were also then and there merchants, and carried on such trade and business in partnership together; and the said J. H. and J. C. and the said Alexander and Charles Henry so respectively being merchants as aforesaid, and an importation of white Russia tallow candle being expected to be made into this kingdom, by which the market-price of such commodity was expected to be altered, the said J. H. and J. C. by one John Gairford their broker or agent in that behalf, and by and in the names of Messrs. H. and C. heretofore, to wit, on, &c. at L. aforesaid, &c. agreed to sell unto the said Alexander and Charles Henry, who then and there agreed to buy of them the said J. H. and J. C. on arrival, that is to say, on the arrival of such expected importation of tallow as aforesaid, one hundred casks of new merchantable white Russia tallow candle, at the rate and upon the terms following, to wit, at the rate of forty-three shillings per hundred

For not selling and delivering part of an expected importation of tallow, pursuant to original contract, which was afterwards altered to a new contract, as to the mode of payment.

hundred weight, with customary allowance for taxes and defects to be taken at the landing weights, and to be paid for by the acceptance of them the said Alexander and Charles Henry, at six months from delivery; and in case any duty should be imposed on tallow before arrival, that is to say, before the arrival of such expected importation as aforesaid, the said duty to be paid by the said Alexander and Charles Henry: And the said Alexander and Charles Henry in fact further say, that the said J. H. and J. C. having so agreed to sell to them the said Alexander and Charles Henry such tallow as aforesaid, at the rate and upon the terms aforesaid, and being desirous of being paid for the same in ready money instead of by such acceptances of the said Alexander and Charles Henry as aforesaid, it was afterwards, and before the delivery of the said tallow, or of any part thereof, unto the said Alexander and Charles Henry, to wit, on, &c. agreed between them the said Alexander and Charles Henry and the said J. H. and J. C. that the said tallow should be paid for in ready money instead of by such acceptance as aforesaid, on the said Alexander and C. H. being allowed at the rate of three pounds by the hundred for discount; and thereupon afterwards, to wit, on, &c. in consideration of such several contracts for the said tallow so agreed to be sold to the said Alexander and C. Henry as aforesaid, and also in consideration that the said Alexander and Charles Henry, at the special instance and request of the said J. H. and J. C. had then and there undertaken, and faithfully promised the said J. H. and J. C. to take and buy such tallow of the said J. H. and J. C. according to the terms of the said original contract or agreement for the same, except as to the mode of payment for the same, and as to such payment to make the same in ready money, according to the terms of the said second contract or agreement respecting the said tallow, instead of by such acceptance as aforesaid, they the said J. H. and J. C. undertook, &c. the said Alexander and Charles Henry to sell and deliver to them the said one hundred casks of new merchantable, &c. so by them contracted for as aforesaid, according to the terms of the said first contract or agreement for the same, except as to the mode of payment for the same, and as to that according to the terms of the said second contract or agreement respecting such tallow: And the said Alexander and C. Henry in fact say, that although the said importation of tallow so expected to be made as aforesaid, hath long since arrived and been made into this kingdom, to wit, at L. &c.; and although the said J. H. and J. C. could, might and ought to have thereupon sold and delivered to them the said Alexander and C. H. the said one hundred casks of new, &c. so by them contracted and agreed for as aforesaid, according to the terms of such contract for the same as aforesaid; and although they the said J. H. and J. C. did afterwards, to wit, on, &c. sell and deliver to the said Alexander and C. Henry a part, to wit, fifty of the said one hundred casks of tallow so by them contracted and agreed for as aforesaid, and were thereupon

thereupon paid for the same at the rate aforesaid, in ready money, according to the terms of the said second contract or agreement respecting such tallow; and although the said Alexander and C. Henry were then and there willing, and offered to buy of and receive from the said J. H. and J. C. the residue of the said one hundred casks of tallow so contracted and agreed for as aforesaid, and were then and there ready and willing to pay them for the same at the rate and in manner last aforesaid, and then and there requested them accordingly to deliver the same to them the said Alexander and C. Henry: Yet the said J. H. and J. C. not regarding, &c. but, &c. the said Alexander and Charles Henry in this behalf, did not nor would, on the aforesaid arrival of such importation of tallow as aforesaid, or at any time afterwards, sell and deliver, or cause to be sold and delivered, the said residue of the said one hundred casks of tallow so contracted and agreed for as aforesaid, or any part thereof, to the said Alexander and Charles Henry, but then and there, and always from thence hitherto, wholly refused and do refuse so to do, contrary to the tenor and effect of the aforesaid contract for the same, and in breach and violation thereof, and of the aforesaid promise and undertaking of them the said J. H. and J. C.; and whereby the said Alexander and Charles Henry have lost and been deprived of certain profit, benefit, and advantage that would otherwise have arisen and accrued to them from such sale and delivery of the said residue of the said tallow, and in consequence and by reason of a rise and increase in the market-price, were obliged to buy and purchase other tallow in the lieu and instead thereof, at a very advanced price, and for much more money than they so agreed to pay for the said residue of the said tallow as aforesaid, and not only lost the sale and disposal of the said residue of the said tallow, but were also forced and obliged to pay, and did pay a certain large sum of money, to wit, the sum of twelve pounds under and in respect of a certain contract before then made between the said Alexander and C. Henry for the freight and transportation of such residue of the said tallow to the intended purchasers thereof, and lost and were deprived of the benefit of such contract for the said freight of the said residue of the said tallow, and were, in consideration thereof, put to great trouble, inconvenience, and expence in and about the procuring and obtaining another ship or vessel for the conveyance of the said tallow so by them bought in lieu and in the stead of the said residue of the said tallow so by them bought and agreed for with the said J. H. and J. C. as aforesaid, to wit, at, &c.

LONDON, *s.* Moses Lara complains of Daniel Richard, Declaration v. John Kyann, and John M'Taggatt, being, &c.; for that the said defendants heretofore, to wit, on, &c. at, &c. put up, and caused to be put up to sale by the candle, at a certain public coffee house *not delivering to plaintiff certain goods which he* bought at a public auction, and which were sold by the defendants auctioneers,

ASSUMPSIT SPECIAL.—NOT DELIVERING, &c.

in London aforesaid, called Garraway's Coffee-house, in one lot a certain large quantity, to wit, seven tons weight of valonia then and there alleged to be seen at a certain wharf called Chamberlain's Wharf, upon and under the terms and conditions of sale following, to wit, the said valonia to be sold with customary allowances, and one shilling to be advanced upon each and every bidding for the same, and the said valonia to be taken away in fourteen days from the time of the sale thereof, and be paid for in ready money or bills as approved of, and a discount of two and an half per cent. or the sum of two pounds ten shillings to be allowed for each and every one hundred pounds of the purchase-money, and so proportionably to be allowed to the purchaser by way of discount on the payment of ready money; and the said Moses did then and there attend at the said sale as a bidder at the same, and then and there at the said sale bid for and purchased, and became and was the buyer of the said valonia at the rate or price following, to wit, at the rate or price of pounds, for each and every ton weight thereof; and thereupon afterwards, to wit, on, &c. in consideration of such sale as aforesaid, and also in consideration that the said Moses, at the special instance and request of the said defendants, had then and there undertaken, and faithfully promised them the said defendants to perform and fulfil the terms and conditions of the said sale on the part of him the said Moses as such buyer of the said valonia as aforesaid, they the said defendants undertook, and then and there faithfully promised the said Moses to perform and fulfil the terms and conditions of the said sale of the said valonia on the part of the seller thereof, and that such terms and conditions should be accordingly performed and fulfilled, and also to accordingly deliver, or cause to be, and that the said valonia should accordingly be delivered to, and had and taken by him the said Moses: And the said Moses in fact says, that although he the said Moses, relying upon the aforesaid promise and undertaking of the said defendants, did, at the time of his purchasing the said valonia at the said sale as aforesaid, to wit, on, &c. at, &c. advance the sum of one shilling per ton upon the same, according to the conditions of the aforesaid sale; and although he the said Moses within and at the end of and after fourteen days from the aforesaid sale, was ready and willing to take away, and also to pay the residue of the aforesaid purchase-money thereof for the said valonia, according to the conditions and terms of the aforesaid sale; and although he the said Moses, within the said fourteen days next after the aforesaid sale, to wit, on, &c. at, &c. did apply to the said defendants, and also at the aforesaid wharf called, &c. for the said valonia, and for the delivery thereof unto him the said Moses; and although he the said Moses did then and there offer to pay them the said defendants for the said valonia, according to the terms of the aforesaid sale thereof; and although he the said Moses hath always from thence hitherto been ready and willing to take away and pay for the said valonia at the rate and upon the terms and conditions aforesaid, and hath tendered such payment to them the said defendants, to wit, at, &c.: Yet the said
defendants,

defendants, contriving, &c. the said Moses in this behalf, did not regard, nor hath either of them regarded, their aforesaid promises and undertakings, but have, and each of them hath broke and violated the same, and thereby craftily deceived the said Moses in this, that neither they the said defendants, nor any other person or persons whomsoever, did within, or in, or at the end of the said fourteen days next after the aforesaid sale thereof, or at any other time whatsoever, deliver or cause to be delivered to him the said Moses, the said valonia so by him purchased as aforesaid, nor could nor was the same to be had, received, or taken by him the said Moses at or from the aforesaid wharf or elsewhere, nor hath he as yet received or been able to receive the same, nor was nor hath the same been forthcoming when applied for, but they the said defendants to deliver, or cause to be delivered to him the said Moses, have, and each of them hath, hitherto wholly refused, and still refuse so to do, contrary to the tenor and effect of their aforesaid promise and undertaking; whereby he the said Moses hath lost and been deprived of certain great profit, benefit, and advantage, amounting in the whole to a large sum of money, to wit, the sum of pounds, which would otherwise have arisen and accrued to him from the delivery of the said valonia, under and upon the terms of the aforesaid sale and the conditions thereof, to wit, at, &c. And whereas, &c.

Second Count.

See Assumpsit against Auctioneers, post.

WARWICKSHIRE, to wit. W. S. complains of S. P. being, &c.; for that whereas, on the first day of February 1787, at B. in the said county of Warwick; in consideration that the said W. at the special instance and request of him the said S. would sell and deliver to him the said S. a certain large quantity of buckles, to wit, twenty pair of buckles of great value, to wit, of the value of ten pounds of, &c. he the said Samuel undertook, and to the said W. then and there faithfully promised to deliver to him for and in exchange for the same buckles a certain large quantity of Irish linen of other great value, to wit, of other ten pounds of like, &c. (And the said William in fact says, that he, relying on the said promise and undertaking of him the said S. and in hopes of the faithful performance thereof, afterwards, to wit, on the same day and year aforesaid, at B. aforesaid, in the said county, did sell to him the said S. the said buckles, and did deliver the said buckles to him the said S.:) Yet the said S. not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not yet delivered the said Irish linen, or any part thereof, to the said William (although so to do afterwards, to wit, on the same day and year aforesaid, at B. aforesaid, &c. was by the said William requested), but to deliver the said Irish linen, or any part thereof, to the said William, he the said Samuel hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of his said promise and undertaking so by him in that behalf made as aforesaid, to wit, at, &c. (2d. Count, in consideration plaintiff *had* sold

Declaration, in consideration plaintiff would deliver to defendant a quantity of buckles, he promised to deliver to plaintiff in exchange ten pieces of Irish linen; plaintiff delivered to defendant the buckles, but defendant did not deliver the linen to plaintiff.

fold, leaving out the averment ; count for goods fold and delivered ; *quantum meruit* thereon ; money paid, laid out, and expended, and lent and advanced ; ditto had and received ; common breach to your last Counts.)

Drawn by Mr. GRAHAM.

Declaration for
not delivering a
quantity of fish
as good as the
sample shewn,
and for mixing
other fish than
the sample.

LONDON, to wit. T. H. complains of J. B. J. T. J. P. and M. S. being, &c. ; for that whereas on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would buy of them the said defendants fifteen pots of a certain sort or kind of fish called soals, at or for the price or sum of _____ per pot for each and every of the said pots of soals, they the said defendants undertook, and then and there faithfully promised to send or deliver to him the said plaintiff fifteen pots of soals, and that each and every of the said fifteen pots should contain soals only, and no other sort or kind of fish, and should be good fresh fish, equal in quality and goodness to a certain pot of soals then and there produced and shewn to the said plaintiff as a sample of the said pots of soals to be so sent and delivered to the said plaintiff : and the said plaintiff in fact says, that he, confiding and relying on the said promise and undertaking of the said defendants, and in hopes of the faithful performance thereof, afterwards, to wit, on, &c. at, &c. did buy of the said defendants fifteen pots of soals, at or for the said price or sum of _____ per pot for each and every of the said pots of soals : Yet the said defendants, not regarding their said promise and undertaking so by them made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not send and deliver to the said plaintiff fifteen pots of good fresh soals, equal in quality and goodness to the said pot of soals so produced and shewn to the said plaintiff as a sample of the said fifteen pots of soals so bought, and to be sent and delivered as aforesaid, and containing soals only, and no other fish ; but on the contrary thereof, afterwards, to wit, on, &c. at, &c. did send and deliver to the said Thomas fifteen pots, containing, intermixed with a small quantity of soals, divers other sorts and kinds of fish, to wit, flounders, &c. all of inferior quality and goodness to the said fish called soals ; and which said small quantity of soals, so contained in the said pots so sent and delivered as aforesaid, were not only very inferior in quality and goodness to the said pot of soals so produced and shewn to the said plaintiff as a sample of the said pots of soals so bought by the said plaintiff, and to be so sent and delivered to him as aforesaid, but as well the said soals as the other sorts and kinds of fish so intermixed therewith, and contained in the said fifteen pots of soals so sent and delivered as aforesaid, were, at the time of sending or delivering thereof as aforesaid, so stale, and in such bad condition and plight, that the same became and was of little or no use or value to the said plaintiff, to wit, at, &c. And whereas, &c. (2d Count same as 1st, only leaving out the averment ; 3d and 4th Counts same as 1st and 2d, only leaving out the sample. Add common Counts, and common breach.)

Drawn by Mr. CROMPTON.

LONDON,

LONDON, ff. Ezekiel Egerton complains of William Shepherd, being, &c.; for that whereas the said E. to wit, on, &c. at the special instance and request of the said William, had bargained and sold to the said W. from fifty to one hundred bags of good Smyrna cotton then in parts beyond the seas, and about to arrive (1) *and be imported by the said E. into this kingdom upon the terms following, that is to say, on arrival (meaning when they should arrive in this kingdom), at twenty-three pence per pound, warranted first or good seconds, or an equitable allowance to be made the buyer if not to arrive and be delivered in three months from the said twenty-third day of, &c. or the buyer to have an allowance of one halfpenny per pound for every month they should exceed that time (not exceeding six months); and, at the expiration of that time, the buyer to have it in his power to accept or reject the whole that should arrive, not to exceed one hundred bags, to be delivered in good merchantable condition, the real tares were to be averaged by taring of four bags, two chosen by each party, with one pound per bag super tare, and to be paid for by note at four months from delivery, with two months discount. And whereas also the said W. afterwards, and after the expiration of the three months from the time of the said bargain and sale aforesaid, and before the arrival of the cotton therein mentioned in this kingdom, to wit, on, &c. in consideration of the premises, and also in consideration that the said E. at the like special instance and request of the said W. had then and there (2) faithfully promised the said W. to deliver to him the said (3) W. one hundred bags of such cotton, according to the conditions of the bargain and sale aforesaid, if so many should arrive and be imported by him the said E. into this kingdom, so soon after the arrival of such cotton in this kingdom as the same should be, in merchantable condition, he the said William undertook, and to the said E. then and there faithfully promised, to accept one hundred bags of the said cotton so to be delivered as aforesaid, according to the terms and conditions in the bargain and sale aforesaid mentioned, and to pay for the same in manner before mentioned: and the said E. further in fact says, that afterwards, to wit, on, &c. one hundred bags of Smyrna cotton seconds of him the said E. of great value, to wit, of the value of two thousand pounds of lawful, &c. arrived and were imported by the said E. in this kingdom, that is to say, at London aforesaid, whereof the said William afterwards, to wit, on, &c. there had notice; and the said E. says, that he afterwards, and as soon as the same were in a merchantable condition, to wit, on, &c. offered to the said William to weigh off and deliver the same to him upon the terms (4) aforesaid, and then and there requested the said W. to accept the same, and pay him a large sum of money, to wit, the said sum of two thousand pounds of like, &c. being the value thereof upon the terms aforesaid: Yet the said W. not regarding his promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said E. in this behalf, then and there refused to accept the (5) said one hundred bags of*

Declaration, plaintiff was about to import into this kingdom a quantity of cottons; defendant some time before agreed to purchase them upon their arrival, but did not.

(1) "in this kingdom, at and upon certain terms and conditions then and there agreed upon between the said W. and the said E. to be delivered to him the said W. so soon after their arrival in this kingdom as the same should be in a merchantable condition, he the said W. in consideration thereof,"

(2) "undertaken and"

(3) "last-mentioned cotton, upon such terms and conditions then and there agreed upon between the said W. and the said E. so soon after the arrival of the same in this kingdom as the same should be in a merchantable condition, afterwards, to wit, on, &c. undertook, and to the said E. then and there faithfully promised to accept the said last-mentioned cotton from him the said E. upon

such delivery."

(5) "same from him"

(4) "then and there agreed upon between them as last aforesaid:"

3d Count, for
one hundred
bags of cotton
bargained and
sold.

cotton from him the said E. and did not accept the same, and still refuses to accept the same, nor hath the said W. yet paid him the said E. for the said cotton, amounting to the said sum of money, to wit, to the said sum of two thousand pounds of like, &c. either in the manner aforesaid mentioned, or in any other manner whatsoever, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas, &c. (2d Count same as the first, omitting what is in Italic, and inserting in lieu thereof what is in margin). And whereas also the said E. to wit, on, &c. was possessed of and in another large quantity of good Smyrna cotton, to wit, one hundred and fifty other bags of good Smyrna cotton, and then being in parts beyond the seas, and then about to be imported by him the said E. into this kingdom, that is to say, at L. aforesaid; and thereupon he the said W. well knowing the premises last aforesaid, afterwards, to wit, on, &c. in consideration that the said E. at the like special instance and request of the said W. had then and there bargained and sold to the said W. divers, to wit, from fifty to one hundred of the said last-mentioned cotton, upon certain terms then and there agreed upon between the said E. and the said W.; and also, in consideration that the said E. at the like special instance and request of the said W. had undertaken, and to the said W. then and there faithfully promised to deliver to him one hundred bags of the said last-mentioned cotton, if so many should arrive and be imported into this kingdom by the said E. (and warranted first or good seconds, if not, an equitable allowance to be made to the said W. for the same so soon after such arrival as the same should be in a merchantable condition), he the said W. to wit, on, &c. undertook, and to the said E. then and there faithfully promised to accept from him the said E. one hundred bags of the said last-mentioned cotton upon such delivery, and upon the terms agreed upon between them as aforesaid, if so many should be imported into this kingdom by the said E. as last aforesaid. And the said E. in fact further says, that afterwards, to wit, on, &c. he the said E. did import into this kingdom one hundred bags of second Smyrna cotton; and afterwards, and as soon as the same was in a merchantable condition, to wit, on, &c. he the said E. offered to deliver to the said W. one hundred bags of the said last-mentioned cotton upon the terms last-aforesaid: Yet the said William, not regarding his last-mentioned promise and undertaking in that behalf made as last aforesaid, but contriving and fraudulently intending to deceive and defraud the said E. in this behalf, did not accept, &c. (as in last Count). And whereas, &c. &c. (Goods bargained and sold: 5th Count, Money laid out, &c.: 6th Count, had and received: 7th Count, lent, &c.; account stated; and common conclusion.)

4th Count.

5th Count.

MIDDLESEX,

MIDDLESEX, to wit. J. Waugh and J. Pryor complain of M. H. and W. W. being, &c. &c. for that whereas the said M. and W. heretofore, to wit, on, &c. at, &c. were desirous of the said J. and J. purchasing from them the said M. and W. a certain gelding, at and for a certain price or sum of money, to wit, the price or sum of twenty-three pounds of lawful money of Great Britain; but the said J. and J. suspecting the said gelding to be unsound or likely to be unsound, from a certain swelling which the said gelding then and there had, were then and there unwilling to buy the said gelding without being indemnified against the consequences of the said swelling, and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said John and Joseph, at the special instance and request of the said M. and W. would then and there buy the said gelding of them the said Matthew and William, at and for the price or sum of twenty-three pounds of lawful money of Great Britain, they the said M. and W. undertook and then and there faithfully promised the said J. and J. that if any thing happened from the said swelling, so being on the said gelding as aforesaid, they the said M. and W. would be accountable. And the said J. and J. in fact say, that they, confiding in the said promise and undertaking of the said M. and W. did, after the making thereof, to wit, on, &c. buy the said gelding of and from them the said Matthew and William at and for the said price or sum of twenty-three pounds of lawful, &c. and then and there paid them such money for the same, and the said J. and J. aver, that the said gelding afterwards, to wit, on, &c. at, &c. proved, and became, and was disordered and unsound, from and in consequence of the aforesaid swelling on the same, whereof the said M. and W. then and there had notice, and were then and there required by the said J. and J. to accept and take back again the said gelding, and to return and pay back to them the said J. and J. the said sum of money so by them paid to the said M. and W. for the said gelding as aforesaid, and to thereby account with them the said John and Joseph for and in respect of such unsoundness in the said gelding. And although they the said M. and W. according to the intent and meaning of their aforesaid promise and undertaking, ought to have thereupon accordingly, and by so taking back the said gelding, and returning to the said J. and J. the said sum of money so by them paid for the same as aforesaid, accounted with the said J. and J. for and in respect of such unsoundness as aforesaid in the said gelding. And although they the said J. and J. then and there offered, and have always hitherto been, and still are, ready and willing to return the said gelding to them the said M. and W.: Yet the said M. and W. not regarding their said promise and undertaking so by them made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said J. and J. in this behalf, have not, nor hath either of them as yet received or taken back the said gelding, nor returned or paid back to the said J. and J. the said sum of money so by them paid and given for the same as aforesaid, or thereby, or in any other

Declaration, plaintiffs bought a horse of defendants, they suspected it would soon become unsound from a swelling it had at the time of the sale, in consequence of which swelling they refused to buy the horse unless defendant would take him back again if it turned out unsound; the horse did turn out unsound, and defendant refused to take him back and also refused to repay the purchase money, &c. &c.

(1) " in re-
spect "

3d Count, in
consideration
would buy,
defendant pro-
mised to take
back if the di-
sease turned out
to be the poll
evil.

other manner whatsoever, accounted with the said J. and J. or either of them, for and (1) *on account* of such unsoundness in the said gelding as aforesaid; but they so to do have hitherto wholly neglected and refused, and still refuse so to do; and the said gelding is still upon the hands of them the said J. and J. so disordered and unsound as aforesaid, and is by reason of such unsoundness of no use or value whatsoever to them the said J. and J. to wit, at, &c. And whereas heretofore, to wit, on, &c. at, &c. in consideration that the said J. and J. at the like special instance and request of the said M. and W. would buy of them the said M. and W. a certain other gelding at and for a certain other large price or sum of money, to wit, the price or sum of twenty-three pounds of like lawful money of Great Britain, which said last mentioned gelding from a certain swelling in the same, was then and there suspected to have, or likely to have a certain disorder or disease, called the poll evil, they the said M. and W. undertook, and then and there faithfully promised the said John and Joseph, that if the said swelling in the said last mentioned gelding should turn out or prove to be the poll evil, they the said M. and W. would be accountable. And the said J. and J. in fact further say, that they, confiding in the said last mentioned promise and undertaking of the said M. and W. did, after the making thereof, to wit, on, &c. at, &c. buy the said last mentioned gelding of and from the said Matthew and William, at and for the said price or sum of twenty-three pounds of like lawful, &c. and then and there paid them such price or sum of money for the same. And the said J. and J. in fact further say, that the said swelling, so on the said last mentioned gelding at the time of such sale thereof as aforesaid, to wit, on, &c. turned out and proved to be the poll evil, and the said last mentioned gelding then and there became and was infected with that disease, to wit, at, &c. whereof the said M. and W. then had notice, and were then and there requested by the said J. and J. to account with them for and in respect of such unsoundness in the said last mentioned gelding by the means and cause aforesaid, and for that purpose to take back again the said last mentioned gelding, and to return and pay back to them the said J. and J. the said sum of money so by them paid to the said M. and W. for the said last mentioned gelding as aforesaid. And although they the said M. and W. according to the intent and meaning of the said last mentioned promise and undertaking, ought to have thereupon accordingly, and by so taking back the said last mentioned gelding and returning to the said J. and J. the said sum of money so by them paid for the same as aforesaid, accounted with the said J. and J. for and in respect of such unsoundness as aforesaid in the said last mentioned gelding. And although they the said J. and J. then and there offered, and have always hitherto been and still are ready and willing, to return the said last mentioned gelding to them the said M. and W.: Yet the, &c. &c. (same as first Count.) And whereas, &c. &c. (in consideration plaintiffs would buy defendants undertook that the horse was sound, &c. &c. Add common Counts; account stated; and common conclusion.)

3d Count.

V. LAWES.

FOR

FOR that whereas on the seventh of October 1786, at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had let to hire and delivered to the said defendant a certain gelding of the said plaintiff, of great value, to wit, of the value of thirty pounds, of, &c. to be by him the said defendant ridden from Reading, in the county of Berks, to a certain place called M. in the county of , and back again from M. aforesaid to Reading aforesaid, and no further, he the said defendant undertook, and to the said plaintiff then and there faithfully promised the said plaintiff to ride the said gelding from Reading aforesaid to M. aforesaid, and so back again from M. aforesaid to R. aforesaid, and no further; and that he the said defendant would take due and proper care of the said gelding during the said journey: Nevertheless the said defendant, not regarding his said promise and undertaking, so by him made as aforesaid, but contriving, &c. to deceive and defraud the said plaintiff in this behalf, did not ride the said gelding from Reading aforesaid to M. aforesaid, and so back again, &c. and no further, and did not take due and proper care of the said gelding during the said journey, according to the form and effect of his said promise and undertaking so by him made as aforesaid, but on the contrary thereof, afterwards, to wit, on the same day and year aforesaid, rode and drove the said gelding further and elsewhere than from Reading aforesaid to M. aforesaid, and so back again, &c. to wit, to a certain place called W. in the county of Hants, to wit, at, &c. and did then and there harness the said gelding to a certain cart, and then and there improperly, negligently, carelessly, remissly, and immoderately drove the said gelding, so harnessed to the said cart as aforesaid, and thereby so much abused the said gelding that the said gelding became and was very much hurt, injured and damaged, and the back and divers other parts of the said gelding became and were very much injured, festered and galled, and by reason of the premises not only the said gelding hath been and still is rendered of no use or service to the said plaintiff; but the said plaintiff hath been forced and obliged to lay out and expend, and hath actually laid out and expended, a large sum of money, to wit, the sum of twenty pounds, in and about the healing and curing the said gelding, to wit, at, &c. And whereas also, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, a certain other gelding of the said plaintiff of other great value, to wit, of the value of thirty pounds &c. of like, &c. to be by him the said defendant ridden from R. aforesaid to M. aforesaid, and back from M. aforesaid to R. aforesaid, and no farther; he the said defendant (assumpsit, &c.) to ride the said last mentioned gelding from, &c. to, &c. and so back again, &c. and no farther: Nevertheless the said defendant, not regarding, &c. but contriving, &c. to deceive and defraud the said plaintiff in this behalf, did not ride the said gelding from R. aforesaid to M. aforesaid, and so back again, &c. and no farther; but on the

Declaration against defendant, who had hired plaintiff's horse to ride from R. to M. for putting the horse into a cart and driving him to W. and abusing the horse so much that he was rendered very ill, per quod plaintiff lost the use of him for some time, and was put to great expence in curing him.

2d Count, for riding the horse to W. per quod,

the contrary thereof, afterwards, to wit, on, &c. rode the said last mentioned gelding further and elsewhere than from, &c. to wit, to W. aforesaid, contrary to the form and effect of the said promise and undertaking of the said defendant, so by him made as last aforesaid, whereby the said last mentioned gelding became and was so very much injured, damaged, and spoiled, that not only the said last mentioned gelding hath been and still is of little or no use or value to the said plaintiff, but the said plaintiff hath been forced and obliged to lay out and expend another large sum of money, to wit, the sum of thirty pounds, of, &c. in and about the healing and curing the said last mentioned gelding, to wit, at, &c. And whereas also, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like instance and request of the said defendant, had let to hire and delivered to the said defendant a certain other gelding of the said plaintiff, of other great value, to wit, of the value of other, &c. to be by him the said defendant ridden and used in carrying the said defendant on horseback from R. &c. and so back again, &c. he the said defendant (assumpsit, &c.) to ride and use the said last mentioned gelding in carrying him the said defendant from R. &c. and so back again: Nevertheless the said defendant, not regarding, &c. but contriving, &c. to deceive and injure the said plaintiff in this behalf, did not ride and use the said last mentioned gelding in carrying the said defendant on horseback from, &c. and so back again, &c. but on the contrary thereof, afterwards, to wit, on, &c. at, &c. harnessed and fastened the said last mentioned gelding to a certain other cart, and then and there drove the said last mentioned gelding in the said last mentioned cart from R. aforesaid otherwise and elsewhere than to M. aforesaid, to wit, to W. aforesaid and back again to R. aforesaid, to wit, at, &c. whereby the said last mentioned gelding became and was much injured, damaged, and spoiled, and thereby became unfit for use and work, and hath so continued unfit for use and work for a long space of time, to wit, from the same day and year aforesaid hitherto, and has, during all that time, been wholly useless and unemployed by the said plaintiff; and the said plaintiff hath thereby not only lost divers great gains and profits, but hath been forced and obliged, &c. as aforesaid. (Count for hire of horses, &c. and *quantum meruit*; money paid, &c. lent, &c. had, &c.; and account stated, &c.

Drawn by MR. GRAHAM,

Declaration against defendant for selling plaintiff a horse which he warranted sound, and also that he would go well in a chaise. The horse was unfound and would not go well in a chaise.

LONDON, to wit. James Watson, late of, &c. was attached to answer Robert Leverington in a plea of, &c. for that whereas heretofore, to wit, on, &c. at, &c. in consideration that the said Robert, at the special instance and request of the said James, would buy of the said James a certain mare at and for a certain price or sum of money, to wit, the price or sum of fourteen pounds, of lawful, &c. he the said James undertook and then and there faithfully promised the said Robert that the said mare was then and there

there found *and free from all faults, and that the same* would go well in a chaise. And the said Robert in fact saith, that he, confiding in the said promise and undertaking of the said James, did, after the making thereof, to wit, on, &c. at, &c. buy the said mare of and from the said James, at and for the said price or sum of fourteen pounds, and did then and there pay to the said James the said price or sum of fourteen pounds for the same: Yet the said James, contriving and fraudulently intending, craftily and subtilly, to injure the said Robert, did not regard his aforesaid promise and undertaking, but thereby craftily and subtilly deceived the said Robert in this, that the said mare, at the time of the aforesaid sale thereof, and also at the time of the making of the said promise and undertaking, *was not found nor free from faults, nor would the same* (1) go well in a chaise, but on the contrary thereof was then (1) would not and there *unfound and faulty, and would not go well in a chaise, but was then and there* restive, unruly, and ungovernable (2); whereby (2) when so used and by reason whereof the said mare then and there became and was, and from thence hitherto hath been and still is, of no use or value to the said Robert, to wit, at, &c. And whereas after- 2d Count, wards, to wit, on, &c. (2d Count like the first, omitting what is in *Italic* and inserting what is in the margin. And whereas 3d Count, would heretofore, to wit, on, &c. in consideration, &c. (as before) at and for a certain other large price, &c. he the said James undertook, &c. the said Robert that the said last mentioned mare would go well in a chaise. And the said Robert in fact saith, that he, confiding in the said last mentioned promise and undertaking of the said James, did, after the making thereof, to wit, on, &c. buy the said last mentioned mare of and from the said James, at and for the said last mentioned price or sum of fourteen pounds, and did then and there pay to the said James such last mentioned price or sum for the same: Yet the said James, contriving and fraudulently intending craftily and subtilly to injure the said Robert in this behalf, did not regard the said last mentioned promise and undertaking, but thereby craftily and subtilly deceived the said Robert in this, that the said last mentioned mare, at the time of the aforesaid sale thereof, and also at the time of the making of the said last mentioned promise and undertaking, would not go well in a chaise, but was then and there restive, unruly, and ungovernable, when so used in such carriage; whereby and by reason whereof the said last mentioned mare then and there became and was, and from thence hitherto hath been and still is, of no use or value to the said plaintiff, to wit, at, &c. And whereas heretofore, to wit, on, &c. in consideration, &c. he the said James undertook, &c. the said Robert, that the said last mentioned mare was not then and there a restive mare: And the said Robert in fact saith, that he, confiding, &c. did, after the making thereof, to wit on, &c. buy the said last mentioned mare of and from the said James, at and for the said last mentioned price or sum of fourteen pounds, and did then and there pay to the said James such last mentioned price for the same: Yet the said James, contriving, 4th Count, was not restive.

5th Count, not found.

6th Count.

ing; &c. the said Robert in this, that the said last mentioned mare, at the time of the aforesaid sale thereof, and also at the time of the making of the said last mentioned promise and undertaking, was a restive, vicious, and unruly mare; whereby and by reason whereof the said last mentioned mare, &c. (as before.) And whereas, &c. in consideration, &c. he the said James undertook, &c. that the said last mentioned mare was found: Yet, &c. at the time of the aforesaid sale thereof, and also at the time of the making of the said last mentioned promise and undertaking, was not found, but was then and there unsound; whereby, &c. And whereas, &c.; money had and received. And whereas, &c. was indebted to the said Robert in twenty pounds of like, &c. for horse meat, stabling, and attendance by the said Robert, before that time found, provided, and supplied, for and about divers horses, mares, and geldings, at the like special instance and request; and being so indebted, &c. And whereas, &c. (*quantum meruit*; money laid out, &c.; an account stated; and common conclusion.)

V. LAWES.

**Declaration,
exchange of a
horse for ano-
ther and money,
defendant
knowing his to
be unsound, and
plaintiff's horse
and money be-
ing a valuable
consideration
for a sound
horse.**

FOR that whereas the said plaintiff, on, &c. at, &c. bargained with the said defendant to exchange with the said defendant a certain horse, to wit, a grey gelding of the said plaintiff of a large value to wit, of the value of seventeen pounds seventeen shillings, for a certain horse, to wit, a chefnut gelding, of the said defendant, and to pay also to the said defendant a certain sum of money, to wit, the sum of five pounds five shillings, together with the said gelding of the said plaintiff for the gelding of the said defendant, the said gelding and the said sum of five pounds five shillings to the said defendant, being then and there a good and sound price and valuable consideration for a good and sound gelding, to wit, at, &c.: And the said defendant then and there well knowing the said last mentioned gelding of the said defendant (1) *not to be able to swallow hay, straw, or grass, and to be unsound and unfit for use, by then and there falsely and fraudulently alledging and affirming that the said gelding of him the said defendant was sound for any thing he the said defendant knew to the contrary*, then and there falsely, &c. exchanged (2) *the said gelding of him said defendant with the said plaintiff* (3) *for the said gelding of him the said plaintiff, and also for the said sum of money, to wit, the sum of five pounds five shillings then and there paid by the said plaintiff to the said defendant, together with the said gelding of the said plaintiff so given in exchange for the said gelding of the said defendant as aforesaid*; which said gelding of the said defendant, at the time of the exchange thereof, was not able to swallow hay, &c. and was unsound and unfit for use, and so from thence hitherto hath remained and continued, and still doth so remain and continue, to wit, at, &c.: And so the said plaintiff saith, that the said defendant, on, &c. at, &c. falsely, &c. said plaintiff to the said defendant on that occasion, the said last mentioned gelding of being of a large value, to wit, of &c. and the said sum of five pounds five shillings, good and sound price for a good and sound gelding,

described

deceived him the said plaintiff. And whereas the said plaintiff, afterwards, to wit, on, &c. bargained with the said defendant to exchange with the said defendant a certain other gelding of him said plaintiff for a certain other gelding of him said defendant, and to pay to the said defendant on such exchange a certain sum of money, to wit, another sum of five pounds five shillings: And the said defendant then and there well knowing, &c. &c. (same as the 1st Count, omitting what is in Italic and inserting what is in the margin.)

J. MORGAN.

MIDDLESEX, to wit. N. J. D. esq; complains of B. V. esq. For that whereas, on, &c. at, &c. in, &c. in consideration, that the said plaintiff, at the special instance and request of the said defendant, *would buy of the said defendant a certain picture representing a holy family with several boys, at the price or sum of six hundred and ninety pounds, to be paid by the said plaintiff on, &c. then next, and for two pictures on, &c. there to be delivered to the said plaintiff by the said defendant, and would agree that the said first-mentioned picture should remain in the hands of the said plaintiff until, &c. then next, when it should be delivered to the said defendant to be placed in an exhibition which the said defendant intended to make at the Lyceum in the Strand, and there to remain until, &c. then next, and when it should be returned to the said plaintiff in the same state as when delivered, or in case the said plaintiff would not permit it to be exhibited, that he would pay to the said defendant three hundred pounds more on, &c. next after the making the said agreement, he the said defendant undertook, and then and there faithfully promised the said plaintiff that the said first-mentioned picture was painted by Nicolo Pouffin. And the said plaintiff in fact says, that he, confiding in the said promise and undertaking of the said defendant afterwards, to wit, on, &c. at, &c. in, &c. did buy the first mentioned picture of the said defendant at the aforesaid mentioned price, and on the aforesaid terms, and did then and there deliver the said two pictures to the said defendant: Yet the said defendant, contriving and fraudulently intending craftily and subtly to deceive and injure the said plaintiff in this behalf, did not regard his said promise and undertaking as aforesaid, but thereby craftily and subtly deceived the said plaintiff in this, that the said first mentioned picture was not painted by N. P. by reason whereof the said picture became and was of no value to the said plaintiff, to wit, at, &c. And whereas, &c. second Count same as first, except saying, "he had bought" instead of "he would buy," and omitting what is in italic. And whereas also, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like instance and request of the said defendant, would buy of the said defendant a certain other picture, representing a holy family with several boys, at or for the price or sum of six hundred and ninety pounds, to be paid on, &c. then next, and of two other pictures of the value of ten pounds, on, &c. there to be delivered by the said plaintiff to the said defendant, he the said defendant undertook,*

Declaration upon the verity of a picture, for warranting it to be Pouffin's when it was not.

(The lines in Italic to be left out in 2d Count.)

2d Count.

3d Count.

&c.

4th Count.

5th Count.

6th Count.

&c. that the said last mentioned picture so to be sold by the said defendant was painted by P. N. *And the said plaintiff in fact says, that he, confiding in the said last mentioned promise and undertaking of the said defendant so made as last aforesaid, afterwards, to wit, on, &c. at, &c. in, &c. did buy the said last-mentioned picture of the said defendant for the aforesaid price, and on the aforesaid terms, and did deliver the said two pictures to the said defendant; Yet, &c. [as in first Count.] And whereat, &c. same as 3d count, except saying, "he had bought" instead of he would buy, and leaving out what is in Italic. And whereas also, afterwards, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the like instance and request of the said defendant, would buy of the said defendant a certain other picture representing a holy family with several boys, at the price or sum of six hundred and ninety pounds, to be paid by the said plaintiff on, &c. then next, and for two pictures then and there to be delivered by the said plaintiff to the said defendant, and would agree that the said last-mentioned picture so to be sold by the said defendant as aforesaid, should remain in the hands of the said plaintiff until, &c. when it should be delivered to the said defendant to be placed in an exhibition which the said defendant intended to make at the Lyceum in the Strand, and there to remain until, &c. then next, when it should be returned to the said plaintiff in the same state as when delivered, or in case the said plaintiff would not permit it to be exhibited, that he should pay to the said defendant three hundred pounds more on, &c. then next, he the said defendant undertook, &c. that the said last mentioned picture so to be sold by the said defendant as aforesaid, was the celebrated performance of N. P. called in French La Vengeance d'Enfante. And the said plaintiff in fact says, that he, confiding in the said last mentioned promise and undertaking of the said defendant afterwards, to wit, on, &c. at, &c. did buy the said last mentioned picture at the price aforesaid, and on the aforesaid terms, and did then and there deliver the said two pictures to the said defendant. Yet, &c. (as before). And whereas, &c. (same as last, only stating that "he had bought" instead of "he would buy," and leave out what is in italic. 7th and 8th Counts like the 3d and 4th, only stating the defendant to warrant the picture "to be the celebrated picture of N. P. called, &c. And whereas, &c. for goods, wares, and merchandizes, &c. quantum meruit to ditto. Add the money counts, a Count for work and labour, and quantum meruit to ditto; and common breach to last six Counts.*

The defendant pleaded the general tried in 1787 before Buller, J. and verdict issue, Non Assumpsit. This cause was for plaintiff.

Declaration special assumpsit, for selling an unsound horse at a sound price.

THOMAS BAKFR against John Rogers; for that whereas, on the day of A. D. and in consideration that the said plaintiff would buy of defendant at his special instance and request, a certain horse at and for a certain large sum of money, to wit, in the sum of he the said defendant undertook, and then and there faithfully promised said plaintiff, that

that the said horse was found; and said plaintiff in fact says, that he, confiding in said promise and undertaking aforesaid, defendant afterwards, to wit, on, &c. at, &c. aforesaid, did buy said horse of and from said defendant at and for said price or sum of pounds. Yet said defendant contriving and fraudulently intending craftily and subtilly to injure plaintiff in this behalf, did not regard his said promise and undertaking, but thereby craftily and subtilly deceived said plaintiff in this, that said horse at the time of making said promise and undertaking was not found, but was then and there wholly unsound, and by reason whereof the said horse became and was of no use or value to said plaintiff, to wit, &c. aforesaid. And whereas afterwards, to wit, on the day and year aforesaid, at, &c. aforesaid, in consideration that said plaintiff, at the like special instance and request of said defendant, had then and there bought of said defendant a certain other horse, and had then and there paid to said defendant a certain other large sum of money, to wit, another sum of thirty pounds for the same, he the said defendant undertook, and then and there faithfully promised said plaintiff that said last mentioned horse was found; yet said defendant contriving, &c. in this behalf did not regard his said last mentioned promise and undertaking, but thereby craftily, &c. deceived said plaintiff in this, that said last mentioned horse at the time of the making aforesaid last mentioned promise and undertaking was not found, but was then and there unsound, and by reason thereof the said last mentioned horse became and was of no use or value to said plaintiff, to wit, at, &c. aforesaid. Money had and received, and common conclusion.

F. BULLER.

CUMBERLAND, to wit. J. S. was attached by a writ of privilege, &c. to answer T. Y. on, &c. of a plea of trespass on the case. And whereas the said T. in his own proper person complains that whereas the said J. on the sixth of October 1770, at, C. in the county aforesaid, in consideration that the said T. at the special instance and request of the said J. would buy of him the said J. a certain cow and calf of his the said James, for a large sum of money, to wit, the sum of, &c. undertook, and to the said T. then and there faithfully promised that the said cow had then newly calved, and that the said calf was the calf which had been calved by the said cow, and that the said calf was only three weeks old; and the said Thomas in fact says, that he the said Thomas, relying on the said promise and undertaking of the said Isaac afterwards, to wit, on the same day and year aforesaid, at C. aforesaid in the said county, did buy of the said Isaac the said cow and calf at and for a large sum of money, to wit, for the sum of pounds; and the said T. avers, that the said cow at the time of his the said T.'s purchasing the same of the said J. had not then newly calved, but on the contrary thereof had calved above five months before that time, and that the said calf

Declaration by an attorney against defendant on the warranty of a cow and calf sold by him to plaintiff, that the cow had newly calved, and that the calf was her calf, and not three weeks old.

was

was not the calf which had been calved by the aforesaid cow, but on the contrary was the calf of some other cow. And whereas also the said J. afterwards, to wit, on the same day and year aforesaid, at C. aforesaid in the county aforesaid, in consideration that the said T. at the like special instance and request of the said J. had agreed to buy a certain other cow and calf of him, the said J. undertook, and to the said Thomas then and there faithfully promised that the said last mentioned calf was the calf of the said last mentioned cow; and the said T. in fact says, that the said last mentioned calf at the time of his the said Thomas's buying thereof as aforesaid, was not the calf of the said last mentioned cow, but on the contrary thereof was the calf of another cow. *And whereas* also, on the same day and year aforesaid, at C. aforesaid in the said county, in consideration that the said Thomas, at the like special instance and request of the said J. would buy of the said J. a certain other cow at and for a certain other large sum of money, to wit, the sum of four pounds, he the said J. undertook, and to the said Thomas then and there faithfully promised that the said last mentioned cow was sound; and the said Thomas in fact says, that he, confiding in the said last mentioned promise and undertaking of the said J. afterwards, to wit, on the same day and year aforesaid, at C. aforesaid in the said county, did buy the said last mentioned cow of the said J. at and for a large sum of money, to wit, the said sum of four pounds: Yet the said defendant, contriving, &c. the said plaintiff in this behalf, did not regard his said last mentioned promise and undertakings, but thereby craftily and subtilly deceived and defrauded the said plaintiff in this, that the said last mentioned cow at the time of making the said last mentioned promise and undertaking, was not sound, but was then and there unsound and rotten, and by reason thereof was of no use or value to the said plaintiff, to wit, at, &c. *And whereas* also afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas, at the like special instance and request of the said defendant, had then and there bought of the said defendant a certain other cow, and had then and there paid another large sum of money, to wit, other four pounds for the same to the said defendant, he the said defendant undertook, &c. that the said last mentioned cow was sound: Yet the said defendant contriving, &c. that the said last mentioned cow at the time of the making of the said last mentioned promise and undertaking was not sound, but was then and there unsound and rotten, and thereby became of no use or value to the said plaintiff, to wit, at, &c. And whereas, &c. money had and received; and breach to the last.

F. BULLER,

Declaration against defendant
for not delivering
five hogheads of
hogheads of an inferior quality.

SOMERSETSHIRE, to wit. W. E. against R. S.; for that whereas, on, &c. at, &c. in, &c. in consideration that the said plaintiff had bought of the defendant, but deceitfully sending five hogheads of an inferior quality.

said

said plaintiff, at the special instance and request of the said defendant, would buy of him the said defendant divers, to wit, five hogsheds of cyder, at and for a large price or sum of money, to wit, at and for the price or sum of seven pounds to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff to send and deliver to him the said plaintiff the said five hogsheds of cyder; and the said plaintiff in fact says, that he, relying on the said promise and undertaking of the said defendant so by him made as aforesaid, and in hopes of the faithful performance thereof afterwards, to wit, on, &c. did buy of him the said five hogsheds of cyder, and did then and there pay for the same at and for the price or sum aforesaid: Yet the said defendant, not in the least regarding his said promise and undertaking so by him made as aforesaid, but contriving, &c. the said plaintiff in this behalf did not send and deliver to the said William the said five hogsheds of cyder, but on the contrary thereof afterwards, to wit, on, &c. at, &c. did fraudulently and deceitfully send and deliver to the said plaintiff five hogsheds of cyder of a very inferior quality and goodness to the said five hogsheds of cyder so bought by him the said plaintiff of the said defendant as aforesaid, by reason and means of which said premises the said five hogsheds of cyder became and were of no use or value to the said William, to wit, at, &c. contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid.

Add a 2d Count "in consideration that he had bought."

Drawn by MR. GRAHAM.

MIDDLESEX, to wit. J.W. against W.H.; for that whereas, before and at the time of the making of the promise and undertaking hereafter mentioned, he the said plaintiff was and still is a dealer in soap, and the trade and business of a dealer in soap hath, during all the time aforesaid, used, exercised, and carried on, and still doth use, exercise, and follow, to wit, at, &c. And whereas the said plaintiff, being such dealer in soap, and using, exercising, and following, the said trade and business, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered and caused to be delivered to him the said defendant a certain box, containing a large quantity, to wit, three hundred pounds weight of soap of great value, to wit, of the value of one hundred pounds of lawful money of Great Britain, to be by him the said defendant safely and securely kept, sent, and conveyed from L. to N. in the county of N. and there, to wit, at, &c. to be delivered to A. B. according to the direction of the said plaintiff, for a certain reasonable hire or reward to be therefore paid to him the said defendant, he the said defendant undertook,

Declaration by a soap-boiler against defendant for not sending a box of soap delivered to him from L. to N. and delivering same to A. B. per quod A. B. refused to employ plaintiff any longer.

and

and then and there faithfully promised the said plaintiff, safely and securely to keep, send, and convey the said box, containing the said soap so delivered to the said plaintiff as aforesaid, from L. aforesaid to N. aforesaid, and there, to wit, at, &c. to deliver the same to the said A. B. according to the directions of the said plaintiff: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff hath not safely and securely kept, conveyed, and sent the said box, containing the said soap, and so delivered to him the said defendant as aforesaid, from L. aforesaid to N. aforesaid, and there to wit, at, &c. to be delivered to the said A. B.; but on the contrary thereof wholly omitted and neglected to send and convey the same, and therein failed and made default, to wit, at, &c. contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid; by reason whereof the said A. B. hath not only lost and been deprived of the profits and emoluments arising and accruing to him from the sale of the said box, containing the said soap as aforesaid, and which he otherwise would have gotten and obtained, but also he the said A. B. hath ever since refused, and still doth refuse, to employ the said plaintiff in the way of his said trade and business, which he the said A. B. was used and accustomed to do, and would have done, and hath thereby lost and been deprived of the custom of the said A. B. and of great gains, profits, and emoluments arising therefrom, to wit, at, &c. And whereas, &c. (2d Count same as first, omitting the special damage by the loss of A. B.'s custom, and instead thereof say, "by reason whereof the said last-mentioned box, containing the said last-mentioned soap, was and is of no use or value to the said plaintiff, and is wholly lost to the said plaintiff, to wit, at, &c.") And whereas, &c. (same as 2d Count, except not stating that the box was to be delivered to A. B. but only say, "to be there delivered according to the direction of plaintiff." And whereas also afterwards, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered and caused to be delivered to the said defendant a certain other box, containing another large quantity, to wit, three hundred pounds weight of soap of the said plaintiff of great value, to wit, of the value of other one hundred pounds of, &c. to be by him the said defendant within a reasonable space of time then next following delivered to some common carrier accustomed to carry goods, wares, and merchandizes from London aforesaid to N. aforesaid, and in the mean time and until such delivery to be by him the said defendant kept safely and securely, for a certain other reasonable reward to be therefore paid the said defendant by the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would, within a reasonable time then next following; deliver the said box, and the soap therein contained, to some common carrier accustomed to carry goods, wares, and merchandizes, from London aforesaid to N. aforesaid, in order that the same box, and the same soap therein contained, might be by such common carrier carried

2d Count.

3d Count.

4th Count against defendant for not delivering the box within a reasonable time to some common carrier used to carry goods from L. to N. per quod, the soap wasted, and a reduction in the price taking place, the soap became of little or no value.

carried and conveyed from L. aforesaid to N. aforesaid, and in the mean time and until such delivery that he the said defendant would safely and securely keep the said last-mentioned box, and the said soap therein contained: Yet the said defendant, not regarding, &c. but contriving, &c. did not within a reasonable time deliver or cause to be delivered, nor hath he at any time hitherto delivered, the said last-mentioned box, and the soap therein contained, so any common carrier accustomed to carry goods, wares, and merchandizes, from L. aforesaid to N. aforesaid, but wholly neglected and omitted so to do, and hath therein failed and made default, to wit; at, &c. contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid; by reason whereof, and of the reduction in the price of soap which hath happened and taken place since the time of delivering the said last-mentioned box, and of the soap therein contained, and by the wasting and diminishing thereof, the same soap is greatly reduced in value, and is become of little or no use or value to the said plaintiff, to wit, at, &c. (Add the common Counts.)

Drawn by MR. GRAHAM.

MIDDLESEX, to wit. John Allen complains of William Pearce, being, &c.; for that whereas the said William, before and at the time of making the agreement hereinafter next mentioned, was, and continually from thence hitherto hath been, and still is, a miller, and the art, trade, and business of a miller, during all the time aforesaid, hath used, exercised, and carried on, and still doth use, exercise, and carry on, to wit, at Westminster, in the county aforesaid. And the said William being such miller as aforesaid, and so using, exercising, and carrying on the said trade and business of a miller, afterwards, to wit, on the first April 1773, at Westminster aforesaid, in the county aforesaid, it was agreed by and between the said William Pearce and the said John Allen in manner and form following, that is to say, that the said William Pearce should grind for the said John Allen all his wheat and hogmeat, at and after the rate of seven shillings per load, the wheat to be weighed into the mill, and the same weight to be delivered in meal to the said John Allen; and so of any other grain. And the said agreement being so made as aforesaid, he the said William afterwards, to wit, on the said first April, in the said year 1773, at Westminster aforesaid, in the said county, in consideration that the said John, at the special instance and request of the said William, had then and there undertaken and faithfully promised him the said William to perform and fulfil every thing in the said agreement contained, on his part and behalf to be performed and fulfilled, undertook, and to the said John then and there faithfully promised to perform and fulfil, every thing in the said agreement contained, on his part and behalf to be performed and fulfilled. And the said John in fact says, that he the said John, in pursuance of the said agreement, afterwards, to wit, on the same day and year aforesaid,

Against a miller, for not delivering back the whole quantity of wheat given by plaintiff to defendant to be ground, and the same weight in meal as the weight of the wheat when weighed into the mill, according to agreement, &c.

Mutual promises.

afore said, at W. afore said, in the said county, did deliver to the said William divers large quantities of wheat, barley, and beans, to wit, five hundred bushels of wheat, five hundred bushels of barley, and five hundred bushels of beans, of the said John, being of great value, to wit, of the value of two hundred pounds, to be by the said William ground in his mill for the said John; and that the said wheat, barley, and beans were then and there weighed into the said mill of the said William, and at the time of weighing thereof were of great weight, to wit, of the weight of five thousand pounds each, that is to say, at W. afore said, in the said county; of which premises the said William afterwards, to wit, on the same day and year afore said, there had notice. But the said John further says, that although the said William afterwards, to wit, on the tenth April in the said year 1773, at Westminster afore said, in the said county, did grind for and deliver to the said John a small part of the said wheat, barley, and beans, to wit, thirty pounds weight of wheat, thirty pounds weight of barley, and thirty pounds weight of beans, ground into meal: Yet the said William, not further regarding his said promise and undertaking so by him made as afore said, but contriving and fraudulently intending, &c. in this behalf, did not deliver or cause to be delivered to the said John the residue of the said wheat, barley, and beans in meal, or the same weight in meal as the weight of the said wheat, barley, and beans so delivered by the said John to the said William as afore said, although so to do he the said William afterwards, to wit, on the same day and year last afore said, at W. afore said, by the said John was requested, but to deliver the same to the said John he the said William hath hitherto wholly refused, and still doth refuse. And whereas also the said William afterwards, to wit, on the same day and year last afore said, at W. afore said, in the said county, in consideration that the said John, at the special instance and request of the said William, had delivered and caused to be delivered to the said William divers other large quantities of wheat, barley, and beans, to wit, five hundred bushels of other wheat, five hundred bushels of other barley, and five hundred bushels of other beans, of the said John, being of great value, to wit, of the value of other two hundred pounds, to be by the said William ground in his mill for the said John for a certain reasonable reward, to wit, at and after the rate of seven shillings per load to be therefore paid by the said John to the said William for the said grinding thereof, and had weighed the same into the said mill of the said William, undertook, and then and there faithfully promised the said John, to grind the said last-mentioned wheat, barley, and beans, for the said John, and to deliver the same weight in meal to the said John. And the said John in fact says, that although the said last-mentioned wheat, barley, and beans, were of great value at the time of weighing the same into the said mill, to wit, five thousand pounds weight each; and although the said William afterwards, to wit, on the twentieth April, in the said year 1773, at W. afore said, in the county afore said, did grind for and deliver

ad Crunt, in consideration that plaintiff had delivered to defendant divers other large quantities of wheat, &c. of great value, to be by defendant ground in his mill for plaintiff, for a certain reward to be therefore paid by plaintiff to defendant for grinding thereof, and had weighed the same into said mill of defendant, defendant undertook to grind the same, and to deliver the weight in meal to plaintiff.

to the said John a small part of the said last-mentioned wheat, barley, and beans, to wit, *thirty bushels of the said last-mentioned wheat, &c. ground into meal*: Yet the said William, not further regarding his said last-mentioned promise and undertaking so by him made as aforesaid, but contriving, &c. in this behalf, hath not yet delivered or caused to be delivered to the said John the residue of the said last-mentioned wheat, barley, and beans, in meal, or the same weight in meal as the weight of the said last-mentioned wheat, barley, and beans, so weighed into the mill as last aforesaid, although he the said William afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, was requested by the said John so to do, but to deliver the same to the said John he the said William hath hitherto wholly refused, and still doth refuse. And whereas also the said William afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county, in consideration that the said John, at the like special instance and request of the said William, had delivered and caused to be delivered to the said William divers other large quantities of wheat, barley, and beans, to wit, five hundred other bushels of wheat, &c. of the said John being of great value, to wit, of the value of other two hundred pounds, to be by the said William ground in his mill to meal for the said John, for a certain other reasonable reward, to wit, at and after the rate of seven shillings per load, to be therefore paid by the said John to the said William for the said grinding thereof, and had undertaken and faithfully promised the said William to pay him such rate or price aforesaid for the said grinding of the same, undertook, and then and there faithfully promised the said John to grind the said last-mentioned wheat, barley, and beans, for the said John, and to deliver the same so ground into meal to the said John: And the said John in fact says, that although the said William afterwards, to wit, on the first May, in the said year 1773, at, &c. aforesaid, in the county aforesaid, did grind for and deliver to the said John, a small part of the said last-mentioned wheat, barley, and beans, to wit, thirty bushels of the said last-mentioned wheat, thirty bushels of, &c. ground into meal: Yet the said John, not regarding his said last-mentioned promise and undertaking so made by him as aforesaid, but contriving, &c. in this behalf, hath not yet delivered or caused to be delivered to the said John the said last-mentioned wheat, barley, and beans, either ground into meal or unground, or any part thereof, but to deliver the same to the said John he the said William hath hitherto wholly refused, and still doth refuse. And whereas also the said William afterwards, to wit, on the first January 1774, at Westminster aforesaid, in the said county, was indebted to the said John in the sum of two hundred pounds of lawful, &c. for so much money before that time paid, laid out, &c. (*money had and received, and an account stated*), not regarding his said three last-mentioned promises, hath not paid the said last-mentioned sums of money, &c. (Damages three hundred pounds.)

Breach.

3d Count, in consideration that plaintiff had delivered to defendant divers other large quantities of wheat of other great value, to be by defendant ground in his mill to meal for plaintiff, for a certain other reward, and had promised defendant to pay him such price for the said grinding of the same, defendant undertook to grind the said wheat, and so deliver the same so ground into meal to plaintiff.

This last Count is more general and has no relation to the agreement.

F. BULLER.

(a) Fernotselling and accounting for goods delivered to defendant to sell for plaintiff, and for defendant to deduct a sum of money out of the money arising from the sale of them due from plaintiff to himself.

MIDDLESEX, to wit. Plaintiff complains against defendant, being, &c. : for that whereas the said plaintiff, on the first September, in 1773, at Westminster, in the county aforesaid, was indebted to the said defendant in a large sum of money, to wit, in the sum of one hundred pounds ; and whereas the said plaintiff afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in the said county, had delivered and caused to be delivered to the said defendant divers goods, wares, and merchandizes, to wit, one hundred coloured prints, seals skin, and ten miniature pictures, of the value of five hundred pounds of lawful, &c. to be sold and disposed of by the said defendant for the said plaintiff, at and for the best price or value that he the said defendant could procure or get for the same, and for him the said defendant to deduct the said money so due from the said plaintiff to the said defendant as aforesaid out of the money arising from the sales of the said goods, wares, and merchandizes, and to account for and pay to the said plaintiff the residue of the said money arising from the said sale, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in the said county, undertook, and then and there faithfully promised the said plaintiff, to sell and dispose of the said goods, wares, and merchandizes, for the said plaintiff, at and for the best price and value that he the said defendant could procure for the same, and after deducting the said sum of money so due and owing from the said plaintiff to the said defendant out of the money arising from the sale of the said goods, wares, and merchandizes, that he the said defendant would account for and pay the residue of the said money arising from the said sale of the said goods, wares, and merchandizes to the said plaintiff, when he the said defendant should be thereunto afterwards requested : Yet the said defendant, not regarding his aforesaid promise and undertaking, but contriving and fraudulently intending to deceive and defraud the said plaintiff in this behalf, hath not yet sold the said goods, wares, and merchandizes, or paid to the said plaintiff, after deducting the said money due and owing to the said defendant as aforesaid, the residue of the money arising by sale of the said goods, wares, and merchandizes, or any part thereof, or rendered any reasonable or other account for the same, or of any part thereof, to the said plaintiff, although so to do he the said defendant afterwards, to wit, on the first October, in the said year 1773. at, &c. aforesaid, in the said county, was requested by the said plaintiff ; but the said defendant to do this hath hitherto wholly refused, and still doth refuse. (2d Count, in consideration that plaintiff had delivered to defendant divers goods of plaintiff, to be sold by defendant for the plaintiff, he the said defendant undertook to render to plaintiff a reasonable account of said goods, and of the money which should arise from the sale thereof, or of such part thereof as should be sold by said defendant.) (A 3d Count, money had and received.) Nevertheless the said defendant, not regarding his last-mentioned promise, &c. hath not yet paid the said last-mentioned sum of money, or any part thereof, &c. (Damages five hundred pounds.)

F. BULLER.

(a) See Assumpsit to Account, post.

M. SAY,

M. SAY, administratrix of all and singular the goods and chattels, rights and credits, which were of F. S. her late husband, deceased, at the time of his death, who died intestate, v. Gregory Batemen and Edward Barnett: for that whereas in the lifetime of the said F. to wit, on _____, at _____, in consideration that the said F. would, at the special instance and request of defendants, purchase of one Edward Strode and one Robert Walth a certain annuity or the yearly sum of one hundred pounds, to be paid quarterly during the term of the natural life of the said E. Strode, and to be secured by the bond and warrant of attorney of the said E. Strode and R. Walth; they defendants undertook, and then and there guaranteed and promised the said F. for the good and punctual payment of the said annuity, provided the said F. would admit them from time to time to sue for the same, if default should be made in the payment of the said annuity by the said E. Strode and Robert Walth: And plaintiff in fact says, that the said F. confiding in the aforesaid promise and undertakings of the said defendants, and in hopes of their faithful performance thereof, did, in his lifetime afterwards, to wit, on _____, at _____, purchase of the said E. Strode and R. Walth the said annuity: And thereupon they the said E. S. and R. W. for securing the payment of the said annuity, by their certain bond or obligation in writing, bearing date on the day and year before mentioned, and by them then and there severally duly sealed and delivered, acknowledged themselves to be held and firmly bound to the said F. or his certain attorney, executors, administrators, or assigns, in the penal sum of twelve hundred pounds, of, &c. with a certain condition to the said obligation subscribed, whereby, after reciting that the said F. had contracted and agreed to and with the said E. S. and R. W. for the purchase of one annuity or clear yearly sum of one hundred pounds, of, &c. free and clear of and from all taxes and other deductions whatsoever, during the term of the natural life of him the said E. S. at and for the price or sum of six hundred pounds; which said sum of six hundred pounds he the said F. S. had paid unto the said E. S. and R. W. at or before the sealing and delivery of the said obligation, the receipt whereof they the said E. S. and R. W. did thereby severally acknowledge, it is declared, that the condition of the said obligation was such, that if the said E. S. and R. W. or either of them, their or either of their heirs, executors, or administrators, or any of them, should and did yearly and every year, from and after the date of the said obligation, well and truly pay, or cause to be paid unto the said F. S. his executors, administrators, and assigns, for and during the term of the natural life of him the said E. S. the said annuity or clear yearly sum of one hundred pounds, of, &c. free and clear of and from all and all manner of taxes, charges, and other deductions whatsoever, at, or upon the twenty-first of June, twenty-first of September, &c. by even and equal portions, the first payment thereof to begin and to be made on the twenty-first of June next ensuing the date of the said obligation, then the said obligation to be void and of none effect, or else to be and remain in full force

Declaration in *assumpsit* against administratrix, in consideration that plaintiff would purchase an annuity. Defendants undertook to guarantee such payment, on condition that plaintiff would permit him to sue in his name (a).

(a) See *Assumpsit to Indemnify*, post.

and virtue, as by the said obligation now brought here into court more fully appears : And plaintiff further says, that the said E. S. is still living, to wit, at _____, and that on the twenty-first day of December 1777, twenty-five pounds for one quarterly payment of the said annuity, ending on that day, in that year, on the same day and year, became due and payable from the said E. S. and R. W. to the said F. in his lifetime, and yet is in arrear ; whereof defendants afterwards, to wit, on _____, at W. aforesaid, had notice : And the plaintiff further says, that after the death of the said F. to wit, on the, &c. the further sum of seven hundred pounds, for seven yearly payments of the said annuity, ending on that day, in that year, on the same day and year, became and still is due and payable from the said E. S. and R. W. to plaintiff (to which said plaintiff, administration of all and singular the goods and chattels, rights and credits, which belonged to the said F. S. at the time of his death, after his death, to wit, on, &c. by T. by divine providence, archbishop of Canterbury, primate of all England, and metropolitan, to whom the granting of administration in that behalf did of right belong, was in due manner committed, to wit, at W. aforesaid) ; of all which premises defendants afterwards, to wit, on _____, at W. aforesaid had notice : x And although the said F. in his lifetime, and plaintiff as administratrix as aforesaid since his death, have always in their respective names been ready and willing to permit and suffer defendants from time to time to sue for the said last-mentioned annuity, as default happened to be made in payment thereof, to wit, at, &c. : Nevertheless defendants not regarding their aforesaid promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said F. in his lifetime, and plaintiff as administratrix as aforesaid since his death, did not pay or guarantee to the said F. in his lifetime the payment of the said sum of twenty-five pounds, nor have they since the death of the said F. (although frequently requested by plaintiffs, viz. on _____ and often since at W. aforesaid, in the county aforesaid) paid or guaranteed to plaintiff the payment either of the said sums of money, or of the said sum of seven hundred pounds, but have hitherto wholly refused, and still refuse so to do, and the said several sums of twenty-five pounds and seven hundred pounds are still wholly due in arrear and unpaid, to wit, at W. aforesaid, in the county aforesaid x. And whereas also afterwards in the lifetime of the said F. to wit, on _____, at _____, in consideration that the said F. had, at the special instance and request of defendants, *accepted, or taken a grant or security from*, PURCHASED of the said E. S. and R. W. a certain other annuity, or yearly sum of one hundred pounds during the term of the natural life of the said E. S. to be payable quarterly, TO WIT, ON _____, for securing the payment of which said last-mentioned annuity, the said E. S. and R. W. had executed a bond or warrant of attorney, they defendants undertook, and to plaintiff then and there faithfully guaranteed and promised the said F. for the good and punctual payment of the said last-mentioned annuity, provided the said F. would

would admit them from time to time to sue for the same, if default should be made in payment of last-mentioned annuity by the said R. S. and E. W.: And plaintiff in fact says, that E. S. was living on the twenty-first of December 1781, to wit, at W. aforesaid, in the county aforesaid, and that on the twenty-first of December 1777, twenty-five pounds for one quarterly payment of the said last-mentioned annuity, ending on that day, in that year, on the same day and year, become due and payable to the said F. in his lifetime; whereof defendants afterwards, to wit, on , at , had notice: And plaintiff further says, that after the death of the said F. to wit, on the said twenty-first of December 1781, the further sum of four hundred pounds for four yearly payments of the said last-mentioned annuity, ending on that day, in that year, on the same day and year, become due and payable, and yet is in arrear to plaintiff as administratrix as aforesaid; of all which said last-mentioned premises defendants afterwards, to wit, on , at , had notice. (Same as in the first from x to x for four hundred pounds. Another Count same as the last, on a purchase from Strode only; several other covenants, varying the sums due. 4th and 5th same as 2d and 3d, inserting the words in Italic, and omitting the words in capitals. 6th same as 5th, averring Strode to be still alive. Count for money had and received. Common conclusion.) W. LAMBE.

Non assumpsit. Second, for further plea, by leave, &c. *Plea, Actionem non accrevit infra sex annos.*
Actionem non, because the several causes of action in the said declaration mentioned did not first accrue, nor did any of the said causes first accrue within six years next before the exhibiting of the bill of plaintiffs. And this, &c. Wherefore, &c. G. WOOD.

Precludi non, Because the several causes of action in the said declaration mentioned, and each and every of them did accrue within six years next before the exhibiting of the bill of plaintiff, in manner and form as plaintiff hath above complained against defendants. And this, &c. Conclusion to the country. Replication, taking issue thereon.

LONDON, ff. If James Henshaw, James Coward, Thomas Mist, and Dryden Smith, have made you secure, &c. then put, &c. Andrew Berry, late of, &c. of a plea: for that whereas on the first day of September A. D. 1719, the said plaintiffs were owners and proprietors of a certain snow or vessel called the Vincent snow, being square sterned, plantation built, burthen one hundred and forty tons more or less, with proportionable dimensions, then lying near the Hermitage, John Scott, commander, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; and the said plaintiffs so being owners and proprietors of the said snow or vessel, they the said plaintiffs, on the first day of September A. D. 1719, at L. aforesaid, in the parish and ward aforesaid, caused the said snow to be exposed to public sale by one Samuel Brookes, there then broker, on the conditions following, that is to say, the said proprietors did consent and agree to and with the buyer, that whoever should bid most and last in due time after
 In case on assumpsit for a ship sold at a public auction at Lloyd's.

he should have declared his name and the broker should have repeated the same, should be deemed the buyer, who was immediately to pay down one quarter part of what the said snow should be so sold for into the hands of the said James Henshaw, in London, and the remainder within twenty days after the sale and five shillings to the broker, and bind the purchase; and upon payment of the whole purchase money, a legal bill or bills of sale should be made unto the said purchaser of the said snow, with what belonged to her should be delivered according to the inventory which had been exposed, but the said inventory should be made good as to the quantity only, and the snow and stores should be taken with all faults, in the condition they then lay as to tonnage or any thing else; but in case any default should be made by the purchaser in any of the payments hereafter mentioned, the money paid in part should be forfeited to the sole use of the said proprietors, and they should be at liberty to put up and sell the said snow again, and neither the said James Henshaw, nor any of the said proprietors, his or their heirs, executors, administrators, or assigns, should be anyways accountable or liable to be sued either in law or equity for the said money paid in part, or forfeited as aforesaid; but the buyer so neglecting should be liable for all loss, costs, and damages, which would accrue thereby; and for encouragement to the buyer, the said snow was put up at four hundred pounds, to advance five pounds at each bidding, and no less; and lastly, if any difference should arise between the buyer at the sale, the said snow should be put up again, as the said plaintiffs then and there caused to be published; and of all which said premises the said defendant, on the same day and year aforesaid, at L. aforesaid, in the county aforesaid, had notice; And the said plaintiffs further say, that the said snow was accordingly then and there, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, publicly put up to sale upon the terms and conditions aforesaid; and that the said defendant at the said sale then and there was the highest bidder, and then and there bid for the same the sum of five hundred and ten pounds, which sum was then and there the most and last bidding that was at the said sale bid in due time for the same: and thereupon the said defendant then and there, as and for the buyer thereof, declared his name, and the said broker then and there repeated the same, and thereupon then and there declared the said defendant to be the buyer of the said snow at and for the said sum of five hundred and ten pounds; and the said defendant then and there consented thereunto, and to the binding of the said purchase; and by reason thereof the said defendant became liable to pay, and ought to pay, to the said plaintiff the said sum of five hundred and ten pounds, according to the said conditions of the said sale, to wit, at L. aforesaid, in the parish and ward aforesaid; and being so liable, he the said defendant, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, undertook, and then and there faithfully promised the said plaintiffs to pay them the said five hundred and ten pounds, according to the said conditions of the said sale: And although the said plaintiffs have always

ways been ready to perform and fulfil all the said conditions of sale on their part and behalf to be performed and fulfilled, and although the said defendant after the said sale, to wit, on the same day and year aforesaid, at L. aforesaid, paid into the hands of the said James Henshaw one quarter part of what the said snow was sold for, to wit, the sum of one hundred and twenty-seven pounds ten shillings: Yet the said defendant, not regarding, &c. but contriving, &c. hath not yet paid to them or any of them three hundred and eighty-two pounds ten shillings, residue of the said five hundred and ten pounds, or any part thereof, although to do this the said defendant afterwards, to wit, on, &c. in the year aforesaid, and often afterwards, at L. aforesaid, was requested; but, &c. (Two Counts: 1st, Goods sold and delivered, &c.; 2d, Bargained and sold, &c.)

DEVONSHIRE, to wit. First Count (a), Trover and conversion of a bag. 2d Count as follows: And whereas the said Henry heretofore, to wit, on the said first day of October A. D. 1786, at Exeter aforesaid, in the county aforesaid, delivered unto the said Oliver, a certain other bag of him the said Henry, of a large value, to wit, of the value of forty shillings, of like lawful, &c. to be by him redelivered unto him the said Henry on request, and in the mean time to be taken due and proper care of: And although the said Oliver then and there had and received the said last-mentioned bag of the said Henry under such bailment thereof as aforesaid; and although he the said Oliver ought to have taken due and proper care of the same: Yet the said Oliver, not regarding his said duty as such bailee of the said last-mentioned bag, did not take due and proper care of the same, but omitted and neglected so to do, and afterwards, and whilst he so had the said last-mentioned bag under such bailment thereof as aforesaid, to wit, on the day and year aforesaid, at Exeter aforesaid, in the county aforesaid, he the said Oliver took so little and such bad and improper care of the said bag, and behaved with such negligence in the premises, that the said bag thereby and by reason thereof, and for want of due and proper care of the same afterwards, to wit, on the day and year last aforesaid, became and was, and from thence hitherto hath been and still is wholly lost unto him the said Henry, to wit, at Exeter aforesaid, in the county aforesaid. And whereas the said Henry heretofore, to wit, on, &c. at, &c. delivered to the said Oliver a certain other bag of him the said Henry of a large value, to wit, of the value of forty shillings of lawful money, &c. to be by him redelivered to the said Henry on request, and although the said Oliver then and there had and received the said last-mentioned bag of him the said Henry under such bailment thereof as aforesaid; and although the said Henry afterwards, to wit, on the said first day of October A. D. 1786, aforesaid, at, &c. in, &c. aforesaid, requested the said Oliver to redeliver the said last-mentioned bag unto him the said Henry; and although the said Oliver ought to have then and there accordingly redeli-

Act on v. Defendant for, a bag lent him by plaintiff, which (tho' frequently requested to redeliver) omitted, and Opinion thereon.

(a) This precedent is in Trover, and not in Assumpsit, and does not properly come in this place, but by classing the precedents respecting the doctrine of bailment. In the Index it falls in its proper place, Trover and Negligence.

vered the same: Yet the said Oliver not regarding his said duty as such bailee of the said last-mentioned bag as aforesaid, did not, when he was so requested as aforesaid, redeliver, nor hath he as yet redelivered the said last-mentioned bag unto him the said Henry, but, &c. and still, &c. to, &c. of thirty pounds, and therefore, &c. Pledges.

Opinion what omission in delivering a thing lent amounts to a conversion so as to maintain trover, and where an action for a negligent keeping is more proper.

If the defendant had in fact lost the bag in question at the time of the demand of it, so that such demand could not of course be complied with, I am of opinion, that the mere omission to deliver it on such demand does not amount to a conversion sufficient to maintain trover. But the plaintiff must have recourse to any negligence which the defendant may have been guilty of in the keeping of the bag, and if any thing of that kind can be proved, he will be entitled

to a verdict on the second Count. But if the defendant shews that ordinary care was taken of it, and that though lost, yet it was without any specific or gross negligence in him, then I am of opinion that the plaintiff will fail. And upon the whole, as that (for any thing that is stated to the contrary) is the real case, but the parties, and as the subject matter of the account is so very trivial, I am far from advising the plaintiff to go on.

V. LAWES.

Declaration in special assumpsit in consideration that plaintiff would buy defendant's horse, he promised to return the purchase-money and take him back within a week if he disliked him.

SOMERSETSHIRE, to wit. Meshach Hannam complains of Samuel Brooks being, &c. in a plea of trespass upon the case: for that whereas heretofore, to wit, on the day of , in the year of Our Lord , at Sonerton, in the county of Somerset, in consideration that the said Meshach at the special instance and request of the said defendant, would then and there buy of the said defendant, a certain gelding of him the said defendant at and for a certain large price or sum of money, to wit, the sum of nine pounds fifteen shillings of lawful money of Great Britain, to be paid by the said plaintiff to the said defendant for the same, he the said defendant undertook, and then and there faithfully promised the plaintiff, that in case he the said plaintiff should dislike or disapprove of the said gelding within the space of a week from the said sale, he the said plaintiff should and might be at liberty to return the said gelding to the said defendant, and that he the said defendant would take back and receive the same, and should and would thereupon repay to the said plaintiff the said price for the same: And the said plaintiff in fact says, that he, confiding in the said promise and undertaking of him the said defendant so by him made as aforesaid afterwards, to wit, on the day and year aforesaid, at S. aforesaid, in the county aforesaid, at the special instance and request of him the said defendant, did buy and receive from him the said defendant the said gelding, at and for the said price and upon the terms aforesaid, and then and there paid him the said Samuel the said price for the same: And the said plaintiff in fact further saith, that afterwards, and within the space of a week from the said sale and delivery of the said gelding, to wit, on the day of , in the year aforesaid, at S. aforesaid, in the county aforesaid, he the said plaintiff disliked and disapproved of the said gelding, and thereupon then and there gave notice thereof to the said defendant, and returned the same to the said defendant, and requested him to repay to him the said plaintiff the said price so by him paid for the same: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to defraud the said plaintiff

plaintiff in this behalf, did not, when the said gelding was so returned to him the said defendant as aforesaid, take back and receive the same, nor did nor would he pay to the said plaintiff the said price so by him paid for the same as aforesaid, but then and there wholly refused so to do, and the said price is still wholly unreturned and unpaid to the said plaintiff, to wit, at S. aforesaid, in the county aforesaid. (2d Count, in consideration that he had bought, &c. 3d and 4th, Consideration, executed and executory on a special *assumpsit* that the horse was found. 5th and 6th, Horse meat, stabling, and attendance. 7th and 8th, Money laid out, and had, and received. 9th, Account stated; and common conclusion.)

T. BARROW.

—, *ff.* C. complains of R. L. being, &c. of a plea of trespass on the case: for that whereas at the time of the making of the promises and undertaking of the said R. L. hereafter next mentioned, and for a long time, to wit, for the space of one whole year then last past, A. G. T. C. W. C. E. U. and J. A. were parishioners, and each and every of them was a parishioner of and in the parish of L. in the county of M. aforesaid, and during all that time severally held and occupied lands and tenements lying and being in the said parish as tenants thereof respectively to the said R. L.: And the said A. G. &c. so being severally parishioners of and in the said parish, and severally holding and occupying lands and tenements, lying and being in the said parish, as tenants thereof respectively to the said R. L. before the time of the making of the promises and undertaking of the said R. L. hereafter next mentioned, to wit, on the eighth day of February A. D. 1749, at the parish aforesaid, one cow of the said A. G. was distrained and taken by distress on said lands and tenements so holden by said A. G. by the then overseers of the poor of the said parish, for the sum of one pound seventeen shillings and sixpence, assessed on him the said A. G. as occupier and possessor of his said lands and tenements, for and towards the maintenance and relief of the poor of the said parish, and wether teggs of the said T. C. were also distrained and taken by distress on the lands and tenements so holden by the said T. C. by the then overseers of the said parish for one pound seventeen shillings and sixpence, assessed on him the said T. C. as occupier and possessor of his said lands and tenements, for and towards the maintenance and relief of the poor of the said parish, and eight sheep of the said W. C. (as before, &c.) for twenty shillings assessed, and six lambs of the said E. U. &c. for five shillings assessed, &c. and three calves of the said J. A. for seven shillings and sixpence assessed, &c.; all which said cattle after the distresses had been so made and taken as aforesaid, and before the making of the promises and undertaking of the said R. L. hereafter next mentioned, to wit, on the ninth day of February, in the year aforesaid, at L. aforesaid, were duly sold under the said distresses to the said C. A. that is to say, the said cow of the said A. G. for, &c. (and so for every one's cattle and then go on) in the whole amounting to nine pounds fourteen shillings; of all which

Plaintiff bought some cattle of some of defendant's tenants that were distrained. Defendant promised to pay plaintiff the money he gave for some, if he would deliver them again to the tenants; one dying in plaintiff's possession he was to allow for it. Morgan's V.M. 176.

said premises the said R. L. afterwards, to wit, on the same day, &c. &c. had notice x. And thereupon afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in consideration that the said C. A. at the special instance and request of the said R. L. would deliver up to the said R. L.'s respective tenants the said respective cattle so distrained from them respectively, except one of the said sheep of the said W. C. so distrained as aforesaid, which had, after the said distress so taken, died, he the said R. L. then and there undertook and faithfully promised the said C. A. to pay him the said money for which the said cattle so distrained as aforesaid were sold to the said C. A. allowing thereon for the said sheep which had so died as aforesaid: And the said C. A. further says, that he, confiding in the said promises and undertaking of the said R. L. he the said C. A. afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, delivered up to his the said R. L.'s respective tenants the said respective cattle so respectively distrained from them as aforesaid, except the said sheep which so died as aforesaid; whereof the said R. L. then and there had notice; And although the said C. A. hath always hitherto been ready and willing to allow out of the said sum of nine pounds fourteen shillings for the said sheep which so died as aforesaid the value thereof, to wit, seven shillings, to wit, at L. aforesaid; whereof the said R. L. then and there had notice; and although the said sheep so dead as aforesaid was not worth more than seven shillings: Yet the said R. L. not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said C. A. in this behalf, hath not paid to the said C. A. the money so payable to the said C. A. by the said R. L. according to his promise and undertaking aforesaid, or any part thereof (although to do this he the said R. L. afterwards, to wit, on the same day and year last aforesaid, and very often afterwards at L. aforesaid, was requested by the said C. A.) but he to do this hath hitherto wholly refused, and still refuses. And whereas, &c. (shew the distress and sale as before to this mark x, only instead of promises say agreement, and then go on thus:) And whereas on the ninth day of February, in the year aforesaid, at L. aforesaid, a certain discourse was had by and between the said R. L. and the said C. A. of and concerning the said last mentioned distresses and sale, and there being one of the said sheep so distrained from the said W. C. as last aforesaid then dead, it was thereupon agreed by and between the said C. A. and the said R. L. that the said C. A. should deliver up to the said R. L.'s respective tenants the said respective cattle so distrained from them respectively as last aforesaid, except the said one sheep so distrained from the said W. C. as last aforesaid, which was so dead; and that the said R. L. should pay to the said C. A. the said nine pounds fourteen shillings, being the price at which the said C. A. had so bought the said cattle; and that the said C. A. should make satisfaction to the said W. C. for the said sheep which had so died as last aforesaid: And the said agreement being so made afterwards, to wit, on the same day and year last aforesaid (mutual promises),

promises); and although the said C. A. in pursuance of the said agreement afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, did deliver up to the said R. L.'s respective tenants the said respective cattle so distrained from them respectively as last aforesaid, except the said one sheep so distrained from the said W. C. which was so dead, and has always hitherto been there ready and willing to make satisfaction to the said W. C. for the said sheep which had so died as last aforesaid; of all which said premises the said R. L. afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, had notice: Yet the said R. L. not regarding, &c. for the nine pounds fourteen shillings. (3d Count as the last, only to pay the plaintiff the money so assessed on the said several tenants, together with the charges of the said distresses. 4th Count as last aforesaid, duly to pay the plaintiff the monies so assessed on the said several tenants, and every thing else to his the said plaintiff's satisfaction. 6th and 7th Counts, *Indebitatus assumpsit* and *quantum meruit* for divers cattle, goods, wares, and merchandizes sold and delivered to defendant. 8th and 9th Counts, for other cattle, &c. bargained and sold to defendant. 10th and 11th Counts, For divers other cattle, &c. before then sold to defendant, and by virtue of that sale delivered to the said A. G. at the like request of the said R. L. and for divers other cattle, &c. before then sold to the said R. L. and by virtue of that sale delivered to the said T. C. and for divers other, &c. W. C. E. U. and J. A. 12th Count, Money expended. 13th Count, Money had and received. Common conclusion. Add pledges.)

Drawn by MR. WARREN,

LINCOLNSHIRE, ss. John Nettleton, late of, &c. was accused to answer to Sarah Hammond of a plea of, &c.: for that whereas before the making of the promise hereafter mentioned, one J. H. son of the said S. had put himself apprentice to one T. H. one of the attorneys of the court of our sovereign lord the now king of the bench here, to wit, at Westminster, in the county of Middlesex, to be instructed in the mystery or business of such attorney, to serve in the manner of an apprentice, from the feast of, &c. in A. D. 1717, to the full end and term of five years then next following, to wit, at, &c. in the county of L. aforesaid: And whereas on the eighteenth day of July in A. D. 1718, at, &c. aforesaid, in consideration that the said T. H. at the special instance and request of the said J. N. with the consent, assent, and agreement as well of the said J. H. as aforesaid, S. his mother had assigned over the said J. H. to the said J. N. for the residue of the said term then to serve by the said J. H. to be served with the said J. N.: And also in consideration of the sum of forty pounds then and there had and received by the said J. N. with the said J. H. on that occasion, he the said J. H. undertook and promised the said S. to return to the said S. the mother of the said J. H. the sum of twenty pounds, provided that the said J. H.

Not paying back (s) part of an apprentice fee agreed to be returned in case apprentice did not continue such a term with the master to whom he had been assigned. Morgan's V. M. 214.

(s) See Assumpsit to repay Money, post.

should

should not settle with the said J. N. for the term of three years, to be computed from the said feast of, &c. A. D. 1717 aforesaid: And the said S. in fact says, that the said J. H. did not settle with the said J. N. for the said term of three years, to be computed from the said feast of, &c. in A. D. 1717, aforesaid, but within that term, to wit, on the day of, &c. in A. D. &c. left the said J. N. to wit, at, &c. aforesaid: Yet the said J. N. not regarding, &c. &c. Pledges, &c.

Drawn by MR. WARREN.

Declaration on In the County Court } GEORGE LINDSAY, by A. B. his
 special *assumpsit* of } attorney, complains of Thomas Greenup
 on an exchange, in a plea of trespass on the case, &c. ; for that whereas before the
 in consideration making of the promise and undertaking of the said defendant here-
 plaintiff would after next mentioned, to wit, on, &c. at, &c. in the said county of
 exchange certain , and within the jurisdiction of this court, the said plaintiff
 cattle of plain- was lawfully possessed of divers, to wit, seven cows, and was then
 tiffs for cattle of about to go to a certain fair, called Garstaug fair, holden at
 defendants, to- in the said county of , and within the jurisdiction of this
 gether with a court ; and the said defendant was also then and there, that is to
 sum of money say, on, &c. at, &c. in the county and jurisdiction aforesaid, pos-
 to boot, the sessed of a certain heifer and a certain mare ; and the said plaintiff
 defendant pro- and defendant being so respectively possessed, whilst they were so
 mised to deliver sessed, to wit, on the said day of A. D. 1782
 part of his cattle immediately, aforesaid, at aforesaid, in the county and jurisdiction afore-
 immediately, and the rest, to- said, in consideration that the said plaintiff, at the special instance
 gether with the and request of the said defendant, would exchange the said cows of
 money, at a par- him the said plaintiff for the said heifer and mare of him the said
 ticular time ; defendant and a certain sum of money, to wit, the sum of four
 although part of him the said plaintiff pounds fifteen shillings of lawful, &c. to be paid to the said plaintiff
 cattle delivered, the residue and by him the said defendant, he the said defendant undertook, and
 the residue and money undel- then and there faithfully promised the said plaintiff, that he would
 ivered and un- forthwith deliver to the said plaintiff the said heifer of him the said
 paid. defendant, and also that he would deliver to him the said plaintiff
 the aforesaid mare of him the said defendant, and pay to him the said
 plaintiff the said sum of, &c. on his return from the aforesaid fair
 called, &c. by way of an exchange for the aforesaid cows of the said
 plaintiff : And the said plaintiff in fact says, that he, confiding in
 the said promise and undertaking of the said defendant, so by him
 in manner and form aforesaid made, did afterwards, to wit, on the
 day and year aforesaid, at, &c. aforesaid, in the county and juris-
 diction aforesaid, and in exchange for the said mare and heifer and
 the sum of four pounds fifteen shillings to be paid, delivered, and
 given as aforesaid, deliver to the said defendant the aforesaid cows
 of him the said plaintiff, which the said defendant then and there
 accordingly had and received from him the said plaintiff : And the
 said plaintiff in fact further saith, that although he did afterwards go
 to the aforesaid fair called, &c. and afterwards, to wit, on the
 day of , in the year 1782, return from the same, to wit,
 at, &c. aforesaid ; whereof the said defendant then and there had
 notice :

notice ; and although the aforesaid defendant hath delivered his aforesaid heifer to the said plaintiff by way of and in part of such exchange as aforesaid : Yet the said defendant, not regarding his said promise and undertaking so by him in manner and form aforesaid made, but contriving, &c. to deceive and defraud the said plaintiff in this behalf, did not on his return from the said fair called, &c. as aforesaid, deliver and pay, nor hath he at any other time whatsoever delivered and paid, by way of such exchange as aforesaid, or otherwise, the said mare of him the said defendant, and the said sum of, &c. so by him agreed to be respectively delivered and paid to the said plaintiff as aforesaid, or either of them (although to perform, &c.), but to do this hath hitherto wholly refused, &c. And whereas before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. in the county and jurisdiction aforesaid, the said plaintiff was lawfully possessed of divers, to wit, seven other cows, and the said defendant was also then and there, to wit, on, &c. at, &c. in the county and jurisdiction aforesaid, possessed of a certain other heifer and a certain other mare ; and the said plaintiff and defendant being so respectively possessed as last aforesaid, whilst they were so possessed, to wit, on, &c. at, &c. aforesaid, in the county and jurisdiction aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had then and there undertaken and agreed with him the said defendant to exchange with the said defendant the said last-mentioned cows of him the said plaintiff for the said last-mentioned heifer and mare of him the said defendant, and a certain sum of money, to wit, &c. of like lawful money, to be paid by the said defendant to him the said plaintiff, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to deliver him the said plaintiff the said last-mentioned heifer and mare of him the said defendant, and also to pay him the said plaintiff the said sum of, &c. by way of and in exchange for the said last-mentioned cows of the said plaintiff : And the said plaintiff in fact says, that he, confiding, &c. did afterwards, to wit, on, &c. at, &c. aforesaid, in the county and jurisdiction aforesaid, and in exchange for the said mare and heifer and sum of four pounds fifteen shillings so agreed to be paid, delivered, and given as last aforesaid, deliver to the said defendant the said last-mentioned cows of him the said plaintiff, which the said defendant then and there accordingly had and received from him the said plaintiff : And the said plaintiff in fact further saith, that although the said defendant hath delivered his said last-mentioned heifer to the said plaintiff, by way of and in part of such exchange as last aforesaid : Yet the said defendant, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, hath not as yet delivered to the said plaintiff, by way of exchange as aforesaid, or in any other manner, the said last-mentioned mare of him the said defendant, nor hath he at any time whatsoever paid the said sum of, &c. so by him agreed to be paid

2d Count more
general.

ASSUMPSIT SPECIAL.—CONCERNING THE EXCHANGE,

paid to the said plaintiff as last aforesaid, or any part thereof (although to perform, &c.), but to do this hath hitherto wholly refused, &c.: (*quantum meruit* for cattle sold and delivered, &c. bargained and sold, &c.; work and labour of plaintiff's mare; money had and received; account stated; and common conclusion to the five last Counts.)

V. LAWES.

OPINION.—If this case can be proved as stated, I see no objection to the action's lying for the whole of plaintiff's demand. As to a set-off on account of the keep of the mare, I do not conceive the defendant intitled to any: but least the Court should incline to allow it, I have inserted a Count for the labour of it, to

which plaintiff will be equally well intitled. I have only to add, that as I have no precedent of a declaration in the court in which this action is brought, I must trust to those who are conversant in its proceedings for the beginning and conclusion of it.

8th January 1783.

V. LAWES.

Declaration on an agreement for an exchange of cattle; defendant was to give his gelding and a sum of money in exchange for plaintiff's gelding; for non-payment of money the action is brought.

HERTFORDSHIRE, ff. Thomas Goulding complains of Joshua May being in the custody, &c.; for that whereas on the first day of January A. D. 1744, at Hertford in said county, a certain discourse was moved and had between said plaintiff and said defendant, of and concerning a certain gelding of said plaintiff and a certain gelding of said defendant, and also of and concerning an exchange to be made between said gelding of said plaintiff and said gelding of said defendant; and upon that discourse it was then and there agreed upon between said plaintiff and said defendant, that said plaintiff should give and deliver up to said defendant his said gelding to and for the sole use of said defendant; and that said defendant should give and deliver up to said plaintiff his said gelding to and for the sole use and benefit of said plaintiff; and that said plaintiff should have, receive, and accept of said defendant his said gelding; and that said defendant should have, receive, and accept of said plaintiff his said gelding; and that said defendant should pay to said plaintiff over and above said gelding so agreed to be delivered by said defendant, the sum of one pound eleven shillings and sixpence, which said sum of money and gelding of said defendant were agreed between the said parties to be paid by said defendant to said plaintiff, in exchange for said gelding of said plaintiff. And whereas afterwards, to wit, on same day and year at, &c. aforesaid, in consideration that said plaintiff (mutual promises): And said plaintiff in fact saith, that in pursuance of said agreement on his part, he said plaintiff afterwards, to wit, on same day and year, at Hertford aforesaid, gave and delivered to said defendant his said gelding to and for his defendant's own sole use and benefit; and although he said plaintiff well and faithfully performed and fulfilled all and every thing in said agreement contained on his part to be performed and fulfilled according to the form and effect of his said agreement and promise and undertaking so made, to wit, at H. aforesaid; and although said defendant then and there delivered his gelding to said plaintiff to and for his said plaintiff's own sole use and benefit, according

according to the form and effect of said agreement: Yet said defendant, not regarding his said promise and undertaking as to the payment of said one pound eleven shillings and sixpence, but contriving and fraudulently intending craftily and subtilly to deceive and defraud said plaintiff in this respect, hath not as yet paid said sum of money, or any part thereof to the said plaintiff, although to do this he said defendant was requested by said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at, &c. aforesaid, but he to pay the same to him, or to perform his said agreement and promise in that respect, he said defendant hath hitherto wholly refused, and still refuses. (Counts for cattle, goods, wares, and merchandizes sold and delivered by plaintiff to defendant; and common conclusion to those Counts.)

Drawn by MR. WARREN.

SUFFOLK, *ff.* William Chapman, late of, &c. to Mark Beeton, &c.: that whereas the said Mark, at the time of the making of the promise and undertaking of the said William hereafter next mentioned, was, and from thence hitherto hath been, a chandler, and during all that time hath used and exercised the art and business of a chandler, and in so doing he the said M. hath during all that time there daily made divers large quantities of ashes, to wit, at, &c. in the county aforesaid; and the said M. so making such large quantities of ashes, the said M. at the special instance and request of the said W. on the eleventh day of January A.D. 1749, at, &c. sold to the said W. all the ashes which he the said M. should use in the way of his business as a chandler, within the space of one year then next ensuing, at the rate or price of five shillings a cart-load, to be therefore paid by the said W. to the said M. and undertook, and then and there faithfully promised the said W. to deliver to the said W. the said ashes from time to time, as the said W. should come and take and fetch away the same, and in consideration thereof the said W. undertook, and then and there faithfully promised the said M. to come and take and fetch away the said ashes from time to time as the same should be made, and to pay the said price for the same to the said M.; and although the said M. daily, during the, said year, there made in his said trade a great quantity, to wit, one cart-load of ashes; and although the said W. had due notice thereof, and was frequently during that year, from time to time, and at the end thereof, at, &c. required by the said M. to come and take, and fetch away the said ashes; and the said M. was always ready and willing to deliver all the said ashes from time to time to the said W. according to the considerations and terms of the sale thereof: Yet the said W. not regarding, &c. did not, when he was so requested, or at any other time whatsoever hitherto, accept, fetch, or take away the said ashes, or any part thereof, but to do the same there during all that time wholly refused, and suffered and permitted the same to continue there in the house, yards, and

Declaration for not fetching away ashes which defendant had bargained for at so much per cart-load.

and possession of the said M. taking up room there, and greatly annoying and obstructing the said M. in his lawful business, to wit, at, &c. aforesaid. (Goods sold and delivered, goods bargained and sold, but not fetched away. Common conclusion.)

Drawn by MR. WARREN.

Declaration against an auctioneer for not putting up goods to sale according to advertisement.

LONDON, *ff.* Nathan Levy Coken complains of Henry Pelham being in the custody, &c. of a plea of trespass on the case, &c.; for that whereas heretofore, to wit, on the twenty-second day of July in the year 1775, that is to say, at L. aforesaid, in the parish of St. Mary Coleen, in the ward of Cheap, in consideration any person or persons would purchase all or any of the goods and chattels hereafter mentioned, he the said defendant did assert, publish, and promise that there was to be sold thereby, meaning that there should and would be put up to sale by auction at the Custom-house in Harwich, in the county of Essex, on Tuesday the twenty-fifth July in the said year 1775, at ten of the clock in the forenoon, the following goods in sundry lots, viz: (*here set out the bill of sale*): And the said plaintiff avers, that he, confiding in the promise and undertaking of the said defendant, did afterwards, to wit, on the twenty-fourth day of July 1775, go and perform a certain journey, to wit, from London aforesaid to H. aforesaid, to inspect and view the said goods, and with intent to bid for and purchase on the next day, being the aforesaid Tuesday the twenty-fifth of July aforesaid, a great part thereof at such intended auction, and did then and there, to wit, on the said Tuesday the twenty-fifth July 1775, attend, *i. e.* at ten in the forenoon, to wit, at the Custom-house at H. for the purpose aforesaid, and did then and there request the said defendant to put up for sale and sell by auction the said goods according to the tenor of his promise aforesaid, that he the said plaintiff might bid for and purchase a great part of the said goods, he the said plaintiff then and there intending so to do, and being ready to comply with the conditions of sale: Yet the said defendant, not regarding, &c. but contriving, &c. (Add another Count like the above, only saying, that in consideration *plaintiff* would buy. Two more Counts, J. A. and two more for work and labour, in going journies and giving attendance, and for other work, &c. Money laid out, lent, had, and received. Common conclusion to the three last Counts.)

For conclusion see Assumpsit against Auctioneers, post.

J. MORGAN.

Special assumpsit for not returning a mare let to hire in good condition.

SURRY, *ff.* Alfairs Squire complains of Isaac Burroughs being, &c. in a plea of trespass, &c.; for that whereas, on the thirtieth day of May in the year 1773, at Southwark in the county of S. in consideration that the said Alfairs, at the special instance and request of the said Isaac, had let to hire and delivered unto the said Isaac a certain mare of the said Alfairs in good order and condition, of a large price, to wit, of the price of forty pounds, to be by him the said Isaac rode a certain journey, to wit, from Southwark aforesaid to in the county of Surry aforesaid,

and

and from thence back to Southwark aforesaid, for a certain hire or reward to be therefore paid by the said Isaac to the said Alfairs for the use and hire of the said mare, he the said Isaac undertook, and then and there faithfully promised the said Alfairs to take care of the said mare in the said journey, and to ride the same in a reasonable manner, and to return the said mare to the said Alfairs at the end of the said journey safe and in like good order and condition: And the said Alfairs in fact saith, that although the said Isaac then and there, to wit, on the day and year aforesaid, at Southwark aforesaid, had and received the said mare of the said Alfairs for the purpose aforesaid, in good order and condition; and although the said Isaac afterwards, to wit, on the day and year aforesaid, went with and rode the said mare a part of the said journey, to wit, from Southwark aforesaid to Sutton in the county of Surry aforesaid: Yet the said Isaac, not regarding his aforesaid promise and undertaking so by him made in that behalf as aforesaid, but contriving, &c. to deceive, &c. the said Alfairs in this behalf, he the said Isaac did not, during the time that he had the said mare for the purpose aforesaid, and whilst he was riding the said mare on the journey aforesaid, take care of the said mare, and ride the same in a reasonable manner, and at the end of the said journey, or at any other time, return the said mare unto the said Alfairs safe and in like good order and condition as the said mare was in at the time of letting to hire and delivery thereof to the said Isaac for the purpose aforesaid, according to the tenor of his promise and undertaking aforesaid so by him made in this behalf as aforesaid (although to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid, the said Isaac was requested by the said Alfairs afterwards, to wit, on the thirty-first day of May in the year 1773 aforesaid, and often afterwards, to wit, at Southwark aforesaid), but on the contrary thereof, the said Isaac, during the time that he had the said mare for the purpose aforesaid, that is to say, whilst he was riding the said mare on the journey aforesaid, to wit, on the thirty-first day of May in the year 1773 aforesaid, at Southwark aforesaid, took so little and such bad care of the said mare, and rode the said mare in so unreasonable and careless a manner, that the said mare was then and there thrown and fell down to and upon her knees upon the ground there with such force and violence, that the knees of the said mare were then and there cut, bruised, and wounded, and the said mare was thereby then and there cut, bruised, and wounded, and the said mare was thereby then and there so greatly cut, bruised, lamed and damaged, that the said mare being then and there of the price aforesaid, was thereby then and there wholly spoiled and rendered of no value, to wit, at Southwark aforesaid. And whereas, &c. (*Indebitatus assumpsit et quantum meruit*, for the hire of a mare Two other Counts for a mare bargained and sold; money laid out; and common conclusion to the five last Counts.)

Drawn by MR. WARREN.

(a) Declaration on a special agreement at wit, on the eighteenth of August, A.D. 1773, at Guildford in the said county, were seised, to wit, as devisees under and by virtue of the last will and testament of John Vincent, esquire; then deceased, that is to say, in their demesne as of fee at the will of the late owner of the lord, according to the custom of the manor of Cronsedale, in the county of Southampton, of and in a certain copyhold or customary tenement with the appurtenances (late the estate of said J. V. deceased), situate and being at, &c. and in and parcel of the manor of C. aforesaid, then in the tenure or occupation of Edward Price, as tenant thereof, to them said defendants, that is to say, at and under a certain yearly rent therefore paid by said E. P. to said defendants for same. And whereas said defendants being so seised of said tenements with the appurtenances, they said defendants before the time of the making of the agreement and their promise and undertaking hereafter next mentioned, retained and employed one John Randall as an auctioneer, to put up to sale and sell by auction said tenements with the appurtenances, for the highest price that could be got for the same, to wit, at, &c. aforesaid. And whereas under and by virtue of such retainer the said tenements with the appurtenances, just before the time of the making of the agreement and of the promise and undertaking of said defendants hereafter next mentioned, to wit, on the eighteenth day of August in the year 1773 aforesaid, that is to say, at, &c. aforesaid, was put up to sale by auction by the said J. R. as an auctioneer, and publicly exposed to sale and offered to be sold to the highest or best bidder at such auction by a description of the same, to wit, of a copyhold or customary freehold estate of the late John Vincent, esquire, in the tything of, &c. in the county of, &c. in the occupation of E. P. (i. e.) subject to and under certain conditions of sale, to wit, first, &c. (Here recite the conditions of sale.) And whereas he said plaintiff did then and there, at such auction, bid for said tenement with the appurtenances a large sum of money, to wit, the sum of one thousand six hundred and five pounds, and was then and there at the said auction duly declared the highest bidder for same, and thereupon said J. R. the auctioneer aforesaid, then and there declared said plaintiff to be the buyer or purchaser of said tenement with the appurtenances, at and for said sum of one thousand six hundred and five pounds, to which he said plaintiff then and there assented, and then and there, to bind said purchase, paid as a deposit and as a part of payment of said one thousand six hundred and five pounds into the hands of said John Chandler (one of defendants) a large sum of money, to wit, the sum of one hundred and sixty pounds, to wit, according to the tenor of the aforesaid conditions of sale; and thereupon, afterwards, to wit, on said eighteenth of August in the said year 1773 aforesaid, at, &c. aforesaid, it was agreed by and between said defendants and said plaintiff, that said plaintiff should pay the remaining sum of one thousand

(a) See Special Assumpsit concerning the Sale, Demise, &c. of Lands, ante.

said four hundred forty-five pounds on or before the twenty-ninth of September then next; and that in case the aforesaid E. P. the tenant would not quit the possession until Michaelmas 1774. that he said plaintiff would accept him as a tenant from Michaelmas then next, to wit, from Michaelmas-day which was in the year 1773; and that said defendants should give said plaintiff the actual possession of the premises, to wit, of the tenement aforesaid with the appurtenances, at Michaelmas 1774; and that said plaintiff should concur with said defendants in any and every necessary act for ejecting said E. P. from said premises, to wit, the said tenement with the appurtenances, at or before Michaelmas 1774; and that said plaintiff should pay for the timber, willows, and pollards, standing on said premises, to wit, on said tenement, agreeable to the sixth of the aforesaid conditions of sale, on or before the twenty-ninth of September then next: And said agreement being so made, &c. (mutual promises): and said plaintiff in fact saith, that although he said plaintiff did, after the making of said agreement, and of the promise and and undertaking of him said plaintiff, to wit, on said twenty-ninth of September 1773 aforesaid, at, &c. aforesaid, pay to said defendants the remaining sum of one thousand four hundred and forty five pounds in said agreement specified, and did also pay for the timbers, willows, and pollards standing on the premises, agreeable to the sixth of said conditions of sale; and although he did afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, accept a conveyance of the premises at his own expence; and although he said plaintiff always, from the time of the making of the agreement aforesaid, hath done and performed every thing in said agreement contained, and in the conditions of sale contained, on his part and behalf to be done and performed; and although he said plaintiff did, according to the tenor of the agreement aforesaid, and of his promise and undertaking aforesaid, afterwards, to wit, on the twenty-ninth of September 1773 aforesaid, accept said E. P. as his tenant of the aforesaid premises, to wit, from Michaelmas 1773 until Michaelmas 1774, he the said E. P. having refused to quit the possession of said premises before Michaelmas 1774; and although he said plaintiff always, from the time of making of the said agreement hitherto, hath concurred, and been ready and willing to concur with the said defendants, in any and every necessary act for ejecting said E. P. from said premises at or before Michaelmas 1774, according to the tenor of said agreement, and of his promise and undertaking by him made in that behalf as aforesaid, to wit, at, &c. aforesaid; and although he said plaintiff always, on and from the twenty-ninth day of September, being Michaelmas-day, in the year 1773, hitherto, hath been and still is ready and willing, and often offered to enter into and accept and take the actual possession of the aforesaid premises with the appurtenances, according to the tenor and effect of the aforesaid agreement; and although said defendants had due notice of all and singular the premises aforesaid, and were often requested by said plaintiff to give him the actual

possession of the premises, to wit, of said tenement with the appurtenances, at Michaelmas 1774, according to the tenor of said agreement, and of their promise, &c. by them made in this behalf as aforesaid, to wit, at, &c. aforesaid: Yet said defendants, not regarding, &c. but contriving, &c. to deceive, &c. did not, nor did either of them at Michaelmas 1774, deliver or give, nor have they, nor hath either of them at any time since hitherto delivered or given, or caused to be delivered or given to said plaintiff actual possession of said premises, to wit, of the tenement aforesaid with the appurtenances, according to the tenor of said agreement (although so to do they said defendants were requested by said plaintiff afterwards, to wit, on the twenty-ninth of September 1774, and often afterwards, to wit, at, &c. aforesaid); but they to do this have, and each of them hath hitherto wholly refused, and still do, and each of them still doth, refuse so to do, to wit, at, &c.; and said plaintiff hath not as yet obtained the actual possession of said tenement with the appurtenances. (Counts for money had and received, lent, &c. laid out, &c.; and common conclusion to that Count. Damages two thousand pounds. suit, &c.)

J. MORGAN.

This Cause was tried at Guildford assizes 1776, before Lord Mansfield. Verdict for plaintiff, with 3*l.* damages.

Declaration in special assump-
sit for not pay-
ing of plaintiff
for two hogs sold
and delivered to
defendant, half
in hops and half
in cash.

SOMERSETSHIRE, *ff.* William Wetlafe complains of John Cox, being, &c.: for that whereas said plaintiff, on the first of December A. D. 1752, at, &c. in said county, at the instance of said defendant, sold to said defendant two hogs of said plaintiff, at and for the price of thirty shillings, to be therefore paid by said defendant to said plaintiff, the one half thereof in money and the other half thereof in hops, at ten-pence the pound weight of hops, and then and there undertook and faithfully promised said defendant to deliver said two hogs to said defendant, whenever said defendant should require him so to do, and fetch away same from said plaintiff; and in consideration thereof said defendant then and there paid to said plaintiff one penny in part of payment of said price to be so paid for same, and then and there undertook and faithfully promised said plaintiff to fetch away said hogs on the then next day, and to pay on his fetching away same the residue of said rate or price for the same, to wit, fourteen shillings and eleven-pence, part thereof, in money, and fifteen shillings, residue thereof, in hops at ten-pence the pound weight in hops; and although said defendant did according to his said promise the then next day, at, &c. aforesaid, fetch away said two hogs; and although said plaintiff did deliver to said defendant said two hogs: Yet said defendant, not regarding, &c. but contriving, &c. to deceive and defraud said plaintiff in this behalf, hath not yet paid to said plaintiff said fourteen shillings and eleven-pence in money, or any part thereof, or said fifteen shillings in hops, or any part thereof, although to

do

do this defendants was afterwards, to wit, on first January 1753, and often afterwards, at, &c. aforesaid, requested by said plaintiff; but he to do this hath hitherto wholly refused and still refuses (Add two more Counts, each for one other hog fold at twenty-five shillings, to be paid for in like manner. Counts for goods sold, &c.; and common conclusion.)

Drawn by MR. WARREN.

FOR that whereas said defendant, on the sixth of December 1749, at Westminster, in the county of M. in consideration that said plaintiff had delivered to him two guineas, undertook and then and there faithfully promised said plaintiff to give said two guineas to one Thomas Fassett, at, &c. on the same day: Yet said defendant, not regarding, &c. did not deliver or give said two guineas to said T. F. according to his said undertaking; by reason whereof said plaintiff, for want of said two guineas being delivered to said T. F. as aforesaid, could not proceed to the trial of a cause then depending in said court of said lord the king before the king himself, between one Robert Dodd, plaintiff, and one William Bevan, defendant, wherein said plaintiff was an attorney for said Robert Dodd, the plaintiff; and for said plaintiff not having proceeded to the trial of said cause, afterwards, to wit, on the day of in the year aforesaid, said court of said lord the king here before, &c. granted a rule to said Robert Dodd for an attachment against said plaintiff; to discharge himself from said attachment, said plaintiff afterwards, to wit, &c. in the year aforesaid, at, &c. aforesaid, was obliged to pay, and then and there did pay to said Robert Dodd forty pounds, to the damage of said plaintiff of forty pounds. Suit, &c. pledges, &c.

Declaration at suit of an attorney for defendant not delivering two guineas to a third person, whereby plaintiff was prevented from proceeding to trial in a cause where he was attorney for the plaintiff therein; in consequence of which his then client obtained an action against him, whereby he was obliged to pay, &c.

Drawn by MR. WARREN.

———, *ff.* ——— Bradford, late of, &c. in the county aforesaid, was attached to answer ——— Christopher in a plea of trespass on the case, &c.: and thereupon the said plaintiff, by A. B. his attorney, complains; for that whereas the said plaintiff, on the first day of March A. D. 1747, at ———, in the said county, at the request of the said defendant, bought of the said defendant five Welsh bushels of seed barley, at the rate or price of five shillings for every of the said bushels thereof, to be therefore paid by the said plaintiff to the said defendant, and then and there paid to the said defendant in hand the sum of ——— pounds, in part of payment of the said rate or price so to be paid for the said barley, and then and there undertook and faithfully promised the said defendant to pay to him the residue of the said rate or price so to be paid for the said barley on the delivery of the said barley; and in consideration thereof, the said defendant then and there undertook, and faithfully promised the said plaintiff to deliver to the said plaintiff the said five Welsh bushels of seed barley, when

Special assumption — not delivering barley bought by plaintiff of defendant.

he the said defendant should be thereto requested : And the said plaintiff avers, that he the said plaintiff afterwards, to wit, on the tenth day of March, in the year aforesaid, at, &c. aforesaid, requested the said defendant to deliver to the said plaintiff the said five Welsh bushels of seed barley, and was then and there ready to pay, and offered to pay, to the said defendant the residue of the said rate or price so by him to be paid for the same : Yet the said defendant, not regarding his said promise and undertaking, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, did not at the time he was so requested, or at any other time or times before or afterwards, deliver, or cause to be delivered, the said barley, or any part thereof, to the said plaintiff, but to do this then and there wholly refused, and from thence hitherto hath refused, and still refuses. And whereas, &c. (a Count for money had and received, and the common conclusion).

Drawn by MR. WARREN.

(a) Special assumpsit, for not paying one guinea per day promised to plaintiff for taking a journey and transacting business.

FOR that whereas, on the eighth day of August A. D. 1750, at Westminster, in the said county of M. in consideration that the said plaintiff, at the special instance and request of the said defendant, would take and perform a journey, to wit, from London to the Island of Man, there, to wit, at the said island, to transact certain business for the said defendant, he the said defendant then and there undertook and faithfully promised the said plaintiff to pay him for the same one guinea by the day, from the day inclusive he should set forward from London to the said island, and during his stay there, and until he should arrive at Whitehaven, in Cumberland, from the said island, and three guineas over and above his expences to and from the said island : And the said plaintiff avers, that he confiding in the said promise and undertaking of the said defendant, he the said plaintiff afterwards, to wit, on the ninth day of August, in the year aforesaid, did set out on his said journey, to wit, from London aforesaid to the said Island of Man, and took and performed the said journey, and transacted the said business of the said defendant there at the said island ; and afterwards, to wit, on the thirtieth day of September, in the year aforesaid, arrived at W. aforesaid from the said island ; and by reason thereof, the said defendant, according to his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said plaintiff, fifty-six guineas, to wit, fifty-three guineas for the said fifty-three days during the said journey, and three guineas over and above for his said expences, to wit, at W. aforesaid ; of all which said premises the said defendant afterwards, to wit, on the first day of October A. D. 1750 aforesaid, at W. aforesaid, had notice : Yet, &c. (Common conclusion.)

Drawn by MR. WARREN.

(a) See Assumpsit to pay money in consideration of services done. post.

AGAINST

AGAINST CARRIERS BY LAND.

CUMBERLAND, to wit. J. Beck, William McWhinnie, and William McDowall, complain of Thomas Sim, being, &c. : for that whereas, on the 3d July 1787, at Carlisle, in the said county of C. in consideration that the said plaintiffs, at the special instance and request of the said Thomas, had caused to be delivered to the said Thomas divers goods and merchandizes, to wit, two pipes or casks of brandy, containing a large quantity, to wit, gallons of brandy, and one other pipe or cask of brandy, containing another large quantity, to wit, gallons of brandy of them the said plaintiff of great value, to wit, of the value of pounds of &c. together with two permits, one permit whereby the said two first-mentioned pipes or casks of brandy were duly, and according to the form of the statute in such case made and provided, permitted to pass from K. in that part of Great Britain called Scotland to C. in the said county of C. and to be there received by one R. T. and one other permit whereby the said last-mentioned pipe or cask of brandy, was duly, and according, &c. permitted to pass from K. aforesaid to W. in the said county of C. and there to be received by one M. B. to be by the said T. safely and securely carried and transported, together with the said permits, in a certain ship or vessel called the Active, from K. aforesaid to W. aforesaid, and there, to wit, at W. aforesaid, to be safely and securely delivered in manner following, to wit, the said two first-mentioned casks or pipes of brandy to be delivered to the order of the said R. T. or to a common carrier of goods and chattels, to be carried from thence to the said R. T. at C. aforesaid, such method of sending and carrying the same pipes or casks of brandy being a proper and usual method of sending and carrying such goods from K. aforesaid; and the said last-mentioned pipe or cask of brandy to be delivered to the said M. B. at W. aforesaid, for a certain reasonable hire or reward to be therefore paid to the said Thomas for the same, he the said defendant (*assumpsit*, &c.) safely and securely to carry and transport the said three pipes or casks of brandy, together with the said permits, from L. aforesaid to W. aforesaid, and there, to wit, at W. aforesaid, to deliver the same safely, to wit, the said two first-mentioned pipes or casks of brandy, and the same permit respecting the same, to the order of the said R. T. or to such common carrier as aforesaid, and the said last-mentioned pipe or cask of brandy, and the said permit respecting the same, to the said M. B. : Yet the said T. not regarding, &c. but contriving, &c. did not safely and securely carry and transport the said three pipes or casks of brandy, together with the said permits, from K. aforesaid to W. aforesaid, and there, to wit, at W. deliver the same according to his said promise and undertaking, but wholly neglected and failed so to do; and the said T. so neglectfully and carelessly behaved himself, in the carriage of the same, that for want of due care, and through the art

Declaration against a carrier to whom plaintiff had delivered two pipes of brandy, with two permits, according to the late statute, to be carried from K. to L. for delivering the brandy without the permits, per quod the custom-house officers seized the brandy, and the plaintiff was put to great expence in endeavouring to recover it,

and default of him the said Thomas, he the said Thomas carried and transported the said three pipes or casks of brandy to W. aforesaid, and there delivered and gave up the custody and possession of the same to certain persons there without the said permits, or either of them, and kept the said permits, and each of them, in his own custody and possession; by reason whereof the said three pipes or casks of brandy were afterwards, to wit, on the tenth August, in the year aforesaid, seized and taken away by certain then officers of our lord the now king belonging to the exchequer of our said lord the king, forfeited for want of such permits being then therewith, and were then and there thereby wholly lost to the said plaintiffs; and the said plaintiffs were put to great expence, to wit, to the expence of _____, in endeavouring to recover and establish their right for the said brandy, to wit, at C. aforesaid. And whereas also on the said _____ day of January 1783, at, &c. in consideration that the said plaintiffs, at the like special instance and request of the said defendant, had caused to be delivered to the said Thomas divers other goods and merchandizes, to wit, three other pipes or casks of brandy, and two other lawful permits of them the said plaintiffs as aforesaid, for the removal and delivering of the said last-mentioned brandy of great value, to wit, of the value of _____ pounds, to be by the said Thomas safely and securely carried and transported in a certain other ship or vessel of the said Thomas, called the Active, from R. aforesaid to W. aforesaid, and there, to wit, at W. aforesaid, to be delivered in manner following, to wit, two of the said last-mentioned pipes or casks of brandy, and one of the said permits respecting the same, to or for the use of the said R. T. and the other of the said last-mentioned pipes or casks of brandy, and the other of the said permits, to the said M. B. for a certain reasonable hire or reward to be therefore paid to the said Thomas, he the said Thomas (*assumpsit, &c.*) safely and securely to carry and transport the said last-mentioned goods and merchandizes, together with the said last-mentioned permits, from R. aforesaid to W. aforesaid, and there, to wit, at W. aforesaid, to deliver the same, with the permits to the same respectively, to or for the use of the said R. T. and to the said M. B. in manner last-above-mentioned: Yet the said Thomas, not regarding, &c. did not deliver the said last-mentioned pipes or casks of brandy and permits to the said R. T. and M. B. respectively, in manner last-above-mentioned, at W. aforesaid, or elsewhere, but wholly neglected or refused so to do; and the said last-mentioned goods and merchandizes were, by and through the neglect and default of the said Thomas, wholly lost to the plaintiffs, to wit, at, &c. (Money had and received; and breach.)

ALLEN CHAMBER.

LANCASHIRE,

LANCASHIRE, to wit. Joseph Lowe and Peter Marsh complain of William Shepperd, being in the custody of the marshal of the marshalsea of our sovereign lord the king, before the king himself: for that whereas, on the twenty-fifth day of November, in the year of Our Lord 1780, at Manchester, in the said county of Lancashire, in consideration that the said Joseph and Peter, at the special instance and request of the said William, did then and there deliver to the said William a parcel of goods of the said Joseph and Peter, to wit, a parcel of goods containing silk ferrets and other merchandize of great value, to wit, of the value of twenty pounds of lawful money of Great Britain, directed to Messrs. Bailey and Inglis, in Glasgow, to be carried and conveyed by the said William from Manchester aforesaid to the city of Carlisle, and there, to wit, at Carlisle aforesaid, to be safely delivered to the use of the said Messrs. Bailey and Inglis, of Glasgow aforesaid, and had then and there paid to the said William two shillings as a reasonable reward for his care and trouble in that behalf, the said William undertook, and then and there, to wit, at Manchester aforesaid, faithfully promised the said Joseph and Peter safely and securely to take care of, carry, and convey the said parcel of goods, and to deliver the same at Carlisle aforesaid accordingly: Yet the said William, not regarding his said promise and undertaking, but contriving and fraudulently intending to deceive and defraud the said Joseph and Peter in this behalf, did not take care of, carry, and deliver the said parcel of goods in manner aforesaid, but hath hitherto wholly omitted and neglected so to do, and hath, by the negligence and carelessness of himself and his servants, lost the same, to wit, at Manchester aforesaid, in the county aforesaid. *And whereas* also the said William afterwards, to wit, on the same day and year aforesaid, at Manchester aforesaid, in the said county of Lancaster, in consideration that the said Joseph and Peter, at the like instance and request of the said William, had delivered to the said William a certain other parcel of goods of the said Joseph and Peter, to wit, a parcel of goods containing other silk ferrets and lawful merchandize of great value, to wit, of the value of other twenty pounds of like lawful money, directed to the said Messrs Bailey and Inglis, in Glasgow, to be carried and conveyed by the said William from Manchester aforesaid to the said city of Carlisle, and from thence to be forwarded to the said Messrs. Bailey and Inglis, at Glasgow aforesaid, and had then and there paid to the said William the further sum of two shillings as a reasonable reward for his care and trouble in that behalf, undertook, and then and there, to wit, at Manchester aforesaid, faithfully promised the said Joseph and Peter safely and securely to take care of, carry, and convey the said last-mentioned parcel of goods, and forward the same accordingly; and although the said last-mentioned parcel of goods might have been carried and conveyed to Carlisle aforesaid, and from thence forwarded to Glasgow aforesaid; and although the said William hath been often requested so to do: Yet the said William, not regarding his said last-

Assumpsit, consignors of goods against carrier, for not delivering goods to the use of consignee at Carlisle, to be forwarded to Glasgow as addressed.

2d Count, to be carried to Carlisle and forwarded to Glasgow.

3d Count, on a promissory note made by defendant's servant for him.

last-mentioned promise and undertaking, but contriving and fraudulently intending to deceive and defraud the said Joseph and Peter in this behalf, hath not yet carried, conveyed, or forwarded the said last-mentioned parcel of goods in manner aforesaid; and the said last-mentioned parcel of goods, for want of due care of the said William, and through the mere neglect of the said William, hath been, and is, wholly lost to the said Joseph and Peter, to wit, at Manchester aforesaid, in the county aforesaid. *And whereas* also the said William afterwards, to wit, on the nineteenth day of October, in the year of Our Lord 1782, at Manchester aforesaid, in the said county of Lancaster, made his certain note in writing, called a promissory note, signed with the proper hand of one Henry Smith, then and there being a person usually entrusted by the said William to sign such promissory notes for the said William; whereby the said Henry, for and on account of the said William, on demand promised to pay to the said Joseph and Peter, by the names of Messrs. Lowe and Marsh, or order, thirteen pounds seventeen shillings value received, and then and there delivered the said note to the said Joseph and Peter; by reason whereof, and also by force of the statute in such case made and provided, the said William became liable to pay to the said Joseph and Peter the said sum of money in the said note contained; and being so liable, the said William, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, at Manchester aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said Joseph and Peter, to pay them the said sum of money in the said note contained, when he the said William should be thereunto afterwards requested. (4th Count for money had and received; common conclusion to two last.)

Assumpsit lies for *consignor v. carrier* in this case, 5. Burr. 2680. *Trover* for *consignee*, Bull. Ni. Pri. 36. or *assumpsit*, *Ibid.* 72. But if goods are stolen or lost from carrier, *trover* will not lie, but

assumpsit on the contract, 5 Burr. 2825. Consignor may take back goods in *transitu* before delivery over to consignee he becoming bankrupt; MSS. Case, Bull. Ni. Pri. 36.

(a) Declaration by a Manchester carrier against his porter for losing goods given him to carry from one place to another in M. which the carrier was obliged to pay for.

LANCASHIRE, ss. Samuel Lees complains of Cornelius Tape, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself, in a plea of trespass on the case: for that whereas heretofore, to wit, on the day of in the year of Our Lord 178, to wit, at Manchester in the county of Lancaster, in consideration that the said Samuel, at the special instance and request of the said Cornelius, had then and there caused to be delivered to the said Cornelius divers goods and chattels, to wit, five hundred yards of printed cotton, five hundred yards of printed calico, five hundred yards of chintz, five hundred yards of other calico, and twenty yards of wrapper, of a large value, to wit, of the value of thirty pounds of lawful money of Great Britain, to be by him the said Cornelius safely and securely carried and conveyed from a certain place at Man-

(a) See Negligence, Index, post.

chester

chester aforesaid called _____ to a certain other place at Manchester aforesaid called _____ and there, to wit, at the said last-mentioned place, to be safely and securely delivered for the said Samuel for a certain reasonable reward and recompence to be therefore paid by him the said Samuel to him the said Cornelius, he the said Cornelius undertook, and then and there faithfully promised the said Samuel safely and securely to carry and convey the said goods and chattels from the said place called _____ in Manchester aforesaid, to the said place called _____ in Manchester aforesaid, and then to wit, at the said last-mentioned place safely and securely to deliver the same for the said Samuel; and although the said Cornelius had and received the said goods and chattels to carry, convey, and deliver as aforesaid, to wit, at Manchester aforesaid in the county aforesaid: Yet the said Cornelius, not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Samuel in this behalf, did not deliver, nor hath he as yet delivered the said goods and chattels, or any part thereof, at the said place called _____ in Manchester aforesaid, or elsewhere, to or for the said Samuel, according to his said promise and undertaking, but on the contrary thereof, he the said Cornelius afterwards, and before any delivery of the said goods and chattels, or any part thereof, to or for the said Samuel, to wit, on the day of _____ in the year aforesaid, at Manchester aforesaid in the county aforesaid, so negligently and carelessly behaved, had, and governed himself in the carrying and conveying of the said goods and chattels, that the same, for want of due and proper care in and by reason of the negligence of the said Cornelius, were then and there wholly lost to the said Samuel. And whereas heretofore, to wit, on the day and year first above-mentioned, at Manchester aforesaid in the county aforesaid, in consideration that the said Samuel, at the like special instance and request of the said Cornelius, had then and there caused to be delivered to the said Cornelius divers other goods and chattels, to wit, five hundred yards of other printed cotton, five hundred yards of other calico, five hundred yards of other chintz, five hundred yards of other calico, and a wrapper containing the same, of a large value, to wit, of the value of thirty pounds of like lawful money, to be safely and securely carried and conveyed by him the said Cornelius from the said place, called _____ in _____ street in Manchester aforesaid, to the said place called _____ in _____ street in Manchester aforesaid, and there, to wit, at the said last-mentioned place, to be delivered for the said Samuel, he the said Cornelius undertook, and then and there faithfully promised the said Samuel safely and securely to carry and convey the said last-mentioned goods and chattels from the said place called _____ to the said place called _____ and there, to wit, at the said last-mentioned place, to deliver the same for the said Samuel; and although the said Cornelius then and there took, had, and received the said last-mentioned goods and chattels for the purpose aforesaid; and although

2d Count same as first, omitting the reward.

3d Count, on a
bailment to keep
and deliver
safely.

although he ought to have safely and securely carried, conveyed, and delivered the same according to his said last-mentioned promise and undertaking: Yet the said Cornelius, not regarding his said last-mentioned promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Samuel in this behalf, did not safely and securely carry, convey, and deliver, nor hath he as yet safely and securely carried, conveyed, and delivered the said last-mentioned goods and chattels, or any part thereof, to and at the said place called aforesaid, or elsewhere, to or for the said Samuel, according to his aforesaid promise and undertaking, but on the contrary thereof, he the said Cornelius afterwards, and before any delivery thereof according to his aforesaid promise and undertaking, to wit, on the day of in the year aforesaid, at Westminster aforesaid, in the county aforesaid, so negligently and carelessly behaved and governed himself in the carrying and conveying of the said last-mentioned goods and chattels, that the same, for want of due and proper care in and by reason of the negligence of the said Cornelius, were then and there wholly lost to the said Samuel. And whereas heretofore, to wit, on the day and year first above-mentioned, to wit, at Manchester aforesaid in the county aforesaid, in consideration that the said Samuel, at the like special instance and request of the said Cornelius, had then and there delivered, and caused to be delivered to the said Cornelius, certain other goods and chattels, to wit, five hundred yards of other printed cotton, five hundred yards of other printed calico, five hundred yards of other chintz, five hundred yards of other calico, and a wrapper containing the same, of a large value, to wit, of the value of other thirty pounds, of like lawful money, to be by him the said Cornelius safely kept for and delivered to the said Samuel upon request, he the said Cornelius then and there undertook, and faithfully promised the said Samuel safely to keep the said last-mentioned goods and chattels for, and to deliver them to, the said Samuel upon request; and although the said Cornelius then and there took, had, and received the said last-mentioned goods and chattels on such bailment thereof as aforesaid; and although he ought accordingly to have kept the same for, and to have safely delivered the same to the said Samuel upon request; and although to deliver the same to the said Samuel he the said Cornelius afterwards, to wit, on the day and year last aforesaid, at Manchester aforesaid in the county aforesaid, was requested by the said Samuel: Yet the said Cornelius, not regarding his said last-mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Samuel in this behalf, did not keep the said last-mentioned goods and chattels safely, and so deliver the same to the said Samuel when he the said Cornelius was so requested as aforesaid, nor hath he as yet delivered the same to the said Samuel, according to and in performance of his said promise and undertaking; but on the contrary thereof, he the said Samuel

in fact says, that whilst the said Cornelius had the said last-mentioned goods and chattels in his possession on the aforesaid bailment thereof, to wit, on the day and year last aforesaid, at Manchester aforesaid, in the county aforesaid, he the said Cornelius took so little and such bad care of the said last-mentioned goods and chattels, and behaved and governed himself in so negligent, careless, and incautious a manner in the keeping thereof, that the said last-mentioned goods and chattels then and there were and are, by the mere negligence, carelessness, and inattention of the said Cornelius in the keeping thereof, wholly lost to the said Samuel, to the damage of the said Samuel of thirty pounds; and therefore he brings his suit, &c.

The plaintiff is a carrier from Manchester to York, and the defendant is his porter. The goods in question were delivered to plaintiff to carry from M. to Y. and were lost out of his porter's cart at M. The plaintiff was obliged to make them good, but did not pay for them till after this action brought.

Q_u. Will such last-mentioned circumstance prejudice the plaintiff's action?

thing), the property of a third person, the person to whom I delivered the goods is bound to perform his undertaking with me, and shall not be permitted to shew that the goods were only (a) bailed to me in order to discharge himself; if so, it can make no difference in this case whether the plaintiff paid for the goods in question after this action brought or before, or if at all or not.

T. BARROW.

I take it to be settled law, that if I deliver goods to another to keep safely (or to carry safely, which is the same

(a) See New Abr. tit. Bailment; 1 vol. 237. 1. Roll. Abr. 607.

YORKSHIRE, to wit. John Tritton complains of Samuel Lees, being, &c.: for that whereas the said John heretofore, to wit, on, &c. at, &c. being lawfully possessed of divers goods and chattels, to wit, of a certain box containing therein thirty pair of cotton cards of a large value, to wit, of the value of seven pounds of lawful money of Great Britain; and being also then and there desirous of sending the same from H. aforesaid to M. in the county of C.; and the said Samuel being then and there a common carrier of goods and chattels for hire, he the said John on, &c. delivered, and caused to be delivered, to the said Samuel the said goods and chattels of him the said John, to be by him the said Samuel, as such carrier as aforesaid, carried and conveyed from H. aforesaid to M. aforesaid, and there, to wit, at M. aforesaid, to be safely and securely delivered for the said John to one J. R. for a certain reasonable hire or reward to him the said Samuel; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said John had so delivered the said goods and chattels of him the said John unto him the said Samuel, for the purpose aforesaid, he the said Samuel undertook, and then and there faithfully promised the said John to safely and securely carry and convey the said goods and chattels of and for him the said John from H. aforesaid to M. aforesaid, and there, to wit, at M. aforesaid, to safely and securely deliver the same to the said J. R.; and although the said Samuel then and there had and received the said goods and chattels for the purpose aforesaid, and although a reasonable time

Declaration against a common carrier for not taking proper care of goods committed to his custody, which he was to carry from A. to B. and from whence he was to forward them to C. but did not, &c. &c.

for

ASSUMPSIT SPECIAL.—AGAINST CARRIERS BY LAND.

2d Count, to forward the goods from H. to M. without stating the delivery.

for that purpose hath long since elapsed: Yet the said Samuel, not regarding his said promise and undertaking, but contriving to defraud and injure the said John, did not safely and securely carry or convey the said goods and chattels of him the said John from H. aforesaid to M. aforesaid, and there deliver the same to the said J. R. but therein wholly failed and made default, and on the contrary wrongfully delayed the delivery of the said goods and chattels; and whilst he so had the said goods and chattels for the purpose aforesaid, to wit, on, &c. he the said Samuel took so little and such bad care of the same, and behaved so negligently in the premises, that the aforesaid cotton cards thereby, and for want of due and proper care being taken of the same, became and were and are wholly and entirely spoiled; and in consequence thereof, and of such delay as aforesaid in the delivery thereof, he the said John lost the sale thereof to the said J. R. and all profit and advantage that would have arisen to him from such sale, to wit, at, &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said John, at the special instance and request of the said Samuel, had delivered and caused to be delivered to the said Samuel divers other goods and chattels of him the said John, to wit, a certain other box containing divers, to wit, thirty other pair of cotton cards of a large value, to wit, of, &c. to be by him the said Samuel carried and conveyed from, &c. to, &c. and to be properly and without delay forwarded from thence to M. aforesaid in the county of C. for a certain reasonable hire or reward to him the said Samuel, he the said Samuel undertook, &c. the said John to safely and securely carry and convey the said last-mentioned goods and chattels for him the said John from H. aforesaid to M. aforesaid, and to properly and without delay forward and send the same from thence to M. aforesaid; and although the said Samuel, on, &c. at, &c. had and received the said last-mentioned goods and chattels of and from him the said John for the purpose last aforesaid, and although he the said Samuel carried the same from H. aforesaid to M. aforesaid, and could and might have properly and without delay forwarded and sent the same from thence: Yet the said Samuel, not regarding, &c. but contriving, &c. did not properly and without delay forward and send the said last-mentioned goods and chattels from M. aforesaid to M. aforesaid, but therein wholly failed and made default, on the contrary delayed and omitted to so forward and send the same; and whilst he so had the said last-mentioned goods and chattels for the purpose aforesaid, he the said Samuel took so little and such bad care thereof, that the said last-mentioned cotton cards became and were and are damaged and wholly spoiled: and in consequence thereof, and of such delay as aforesaid in the delivery thereof, he the said John lost and was deprived of the sale thereof, to wit, at, &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said John, at the like special instance and request of the said Samuel, had delivered to the said Samuel divers other goods and chattels of him the said John, to wit, a certain other

3d Count, to be safely carried and delivered, without stating the undertaking to forward.

other box containing divers, to wit, thirty other pair of cotton cards of a large value, to wit, of, &c. to be carried, conveyed, and sent from H. aforesaid to M. aforesaid, in the said county of C. and there, to wit, at M. aforesaid, delivered to the said J. R. for a certain reasonable hire or reward to him the said Samuel, he the said Samuel undertook, &c. the said John, that the said last-mentioned goods and chattels should be safely and securely carried and conveyed for him the said John from, &c. to, &c. and there safely and securely delivered to the said J. R. within a reasonable time then next following; and although a reasonable time for that purpose hath long since elapsed: Yet the said Samuel, not regarding, &c. but contriving, &c. the said John, did not safely and securely, or in any other manner, carry or convey, or cause the said last-mentioned goods and chattels to be carried or conveyed from, &c. to, &c. and there, to wit, at M. aforesaid, safely delivered the same, or cause the same to be delivered to the said J. R. but therein wholly failed and made default; and on the contrary thereof, whilst he so had the said last-mentioned goods and chattels for the purpose aforesaid, he the said Samuel took so little, &c. that the said last-mentioned cotton cards became and were and are damaged and wholly spoiled; and in consequence thereof, and of other the premises, he the said John lost and was deprived of the sale thereof, to wit, at, &c. (Money laid out, &c.; money had and received; account stated; and common conclusion.)

V. LAWES.

MIDDLESEX, ff John Kennard, late of, &c. was attached to answer Thomas Peters, &c.: for that whereas he the said Thomas heretofore, to wit, on, &c. being lawfully possessed of divers goods and chattels, to wit, six dozen of cotton handkerchiefs, &c. of a large value, to wit, of the value of twenty pounds of lawful, &c. and being also then and there desirous of sending the same from, &c. to, &c.; and the said John then and there being a common carrier of goods for hire from, &c. to, &c. in and by a certain common stage waggon of him the said John, he the said Thomas heretofore, to wit, on, &c. at, &c. delivered and caused to be delivered to the said John the said goods and chattels of him the said Thomas, to be by him the said John carried and conveyed from, &c. to, &c. in and by his aforesaid waggon, for certain reasonable hire or reward unto him the said John; (1) and thereupon afterwards, to wit, on, &c. in consideration that the said Thomas had so delivered the said goods and chattels of him the said Thomas unto him the said John for the purpose aforesaid, he the said John undertook, &c. the said Thomas to take care of the said goods and chattels, and to safely and securely carry and convey the same in and by the said goods, &c. from, &c. to, &c. and there, to wit, at, &c. to deliver the same within a reasonable space of time then next following; and although the said John then and there had and received the said last-mentioned goods and chattels of and from him the said Thomas for the purpose last aforesaid; and although a reasonable time for that purpose hath long since elapsed: Yet, &c.

Declaration against a common carrier for not delivering goods which were given him to deliver at, &c. but losing the same.

(1) " he the said John undertook, &c. the said Thomas, to accordingly carry and convey the said last-mentioned

waggon

waggon of him the said John from, &c. to, &c. and there, to wit; at, &c. to deliver the same: Yet the said John, not, &c. but, &c. the said Thomas in this behalf, did not take care of the said goods and chattels of the said Thomas, nor safely nor securely carry and convey the same, or any part thereof, from, &c. to, &c. in and by his aforesaid waggon, or otherwise, nor there deliver the same, or any part thereof, but he so to do hath hitherto neglected and re-

(1) "and the said last-men-
tioned goods and
chattels are still
wholly unde-
livered by the
said John to,
for, or on ac-
count of him
the said Tho-
mas."

fused, and therein wholly failed and made default, (2) *contrary to the aforesaid promise and undertaking of the said John; whereby, and by means whereof, and for want of due and proper care of the said goods and chattels, the said goods and chattels became and are still now wholly lost to the said Thomas, and he hath in consequence thereof lost the sale and disposal of the same, and all benefit and advantage that would otherwise have arisen and accrued to him from such sale, to wit, at, &c.* And whereas, on the day and year aforesaid, in consideration that the said Thomas, at the special instance and request of the said John, had then and there delivered to the said John divers other goods and chattels, to wit, six dozen of other cotton handkerchiefs, &c. (Go on with the 2d Count same as the last, omitting what is in Italic, and inserting what is in the margin, and conclude as before, observing the same as to the Italic: 3d Count, for money had and received; account stated; and common conclusion.)

V. LAWEES.

Declaration a-
gainst the pro-
prietor of a
stage coach for
not carrying
plaintiff therein
from Liver-
pool to Lon-
don after he had
taken a place,
but carrying him
part of the way
per quod plain-
tiff was put to
expence in fi-
nishing his jour-
ney.

LANCASHIRE, to wit. For that whereas defendant, on the tenth of March 1787, and before, was and still is owner and proprietor of a certain common coach or carriage going and passing from Liverpool in the said county of Lancaster to London, and so back again from London aforesaid to Liverpool aforesaid, for the carriage and conveyance of passengers therein for certain hire, fare, and reward, to wit, at Liverpool aforesaid; and defendant being so owner and proprietor of the said coach or carriage, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would then and there take and engage one place in the said coach or carriage of him the said defendant, for him the said plaintiff to be carried and conveyed as a passenger therein from Liverpool aforesaid to London aforesaid, at and for certain reasonable fare or hire to be therefore paid by the said plaintiff to the said defendant for the carriage and conveyance of the said plaintiff as such passenger in the said coach or carriage from Liverpool aforesaid to London aforesaid, undertook, and to the said plaintiff then and there faithfully promised to carry and convey the said plaintiff in the said coach or carriage from Liverpool aforesaid to London aforesaid: And the said plaintiff in fact says, that he, relying on the said promise and undertaking of the said defendant, and in hopes of the faithful performance thereof, afterwards, to wit, on, &c. at, &c. did take and engage one place in the said coach or carriage of defendant for the said plaintiff to be carried and conveyed as such passenger therein from

from Liverpool aforesaid to London aforesaid : And the said plaintiff in fact further says, that although afterwards, to wit, on, &c. defendant, in part of performance of his said promise and undertaking, did carry and convey him from Liverpool aforesaid part of the way to London aforesaid, to wit, to a certain place on the road to London aforesaid, called Congleton, in the county of Chester, to wit, at, &c. : Yet the said defendant, not further, &c. but contriving, &c. did not nor would not carry or convey the said plaintiff in the said coach, or in any other manner, from Congleton aforesaid to London aforesaid, although so to do he the said defendant afterwards, to wit, on, &c. often since, at, &c. was requested; but, on the contrary thereof, then and there wholly refused to carry or convey the said plaintiff in his said coach or carriage, or in any other manner, from C. aforesaid to L. aforesaid, and therein wholly failed and made default, to wit, at, &c. contrary to the form and effect of the said promise and undertaking of the said defendant to be by him made as aforesaid; by reason and means of which said premises the said plaintiff was forced and obliged to lay out and expend, and did actually lay out and expend a large sum of money, to wit, the sum of twenty pounds of, &c. in and about the performance of the residue of his said journey, and in and about the conveying himself from the said place in the said road to London aforesaid, called Congleton aforesaid, to London aforesaid. (2d Count, in consideration plaintiff *had* taken a place, &c. ; common Counts.)

Drawn by MR. GRAHAM.

LONDON, to wit. Leonard Bartholomew, esquire, complains of Edward Sandell, being in the custody of the marshal of the marshalsea of our lord the now king, before the king himself: for that whereas the said Edward, on the twenty-fifth day of March in the year of Our Lord 1777, and long before, *was and from thence hitherto hath been and still is a common carrier* of goods and chattels, and by himself and his servants hath been used and accustomed to carry and convey the goods and chattels of all persons whatsoever requiring the carriage thereof, from the borough of Southwark in the county of Surry to Town Malling in the county of Kent, and from Town Malling aforesaid to the borough of Southwark aforesaid, for a certain hire or reward to be therefore paid to the said Edward: And the said Edward, so being such common carrier as aforesaid, on the said twenty-fifth day of March in the year aforesaid, at the borough of Southwark aforesaid in the county aforesaid, in consideration that the said Leonard, at the special instance and request of the said Edward, had delivered to the said Edward a certain quantity of linen, to wit, twelve diaper table-cloths, five hundred yards of sheeting, of the said Leonard, of the value of fifty pounds, to be safely and securely carried by the said Edward from the borough of Southwark aforesaid, in the county aforesaid, to Town Malling aforesaid, in the said coun-

Declaration in assumpsit on the custom of the realm against a common carrier for losing linen, &c. sent by him.

* See Misfeasance, Negligence, and Nonfeasance, in the Index—most of the remaining precedents against Carriers by Land coming under one of those heads.

2d Count, for
not delivering in
a reasonable
time.

ty of Kent, for a reasonable reward to be therefore paid to the said Edward for the carriage thereof, he the said Edward afterwards, to wit, on the same day and year last aforesaid, at London, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap, undertook, and then and there faithfully promised the said Leonard safely and securely to carry and convey the said quantity of linen from the borough of Southwark aforesaid to Town Malling aforesaid; and although the said Edward then and there had and received the said quantity of linen to be conveyed and carried as aforesaid: Yet the said Edward, not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Leonard in this respect, did not safely and securely carry and convey the said quantity of linen from the borough of Southwark aforesaid to Town Malling aforesaid; but on the contrary thereof, the said Edward so carelessly, negligently, and improvidently behaved himself in and about the carriage thereof, and took so little and such bad care thereof, that by and through the mere neglect and default of the said Edward, and of his servants by him employed in and about the carriage thereof, the said quantity of linen was wholly lost, to wit, at London aforesaid, in parish and ward aforesaid. And whereas also, on the said twenty-fifth day of March in the said year of Our Lord 1777, at the borough of Southwark aforesaid, in the county aforesaid, in consideration that the said Leonard, at the like special instance and request of the said Edward, had delivered to the said Edward a certain other quantity of linen, to wit, twelve other diaper tablecloths, five hundred other yards of sheeting, of the said Leonard, of the value of other fifty pounds, to be carried and conveyed by the said Edward from the borough of Southwark aforesaid to Town Malling aforesaid, safely and securely, and with all reasonable speed and expedition, for a reasonable reward to be therefore paid to the said Edward for the carriage thereof, he the said Edward afterwards, to wit, on the same day and year last aforesaid, at London, to wit, in the parish of St. Mary-le-Bow in the ward of Cheap, undertook, and then and there faithfully promised the said Leonard to carry and convey the said last-mentioned quantity of linen from the borough of Southwark aforesaid to Town Malling aforesaid, safely and securely, with all reasonable speed and expedition; and although the said Edward then and there had and received the said last mentioned quantity of linen to be carried and conveyed as last aforesaid: Yet the said Edward, not regarding his last-mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Leonard in this respect, did not carry and convey the said last-mentioned quantity of linen from the borough of Southwark aforesaid to Town Malling aforesaid, safely and securely, and with all reasonable speed and expedition (although often requested so to do); but on the contrary thereof, the said Edward so carelessly and negligently behaved himself in and about the carriage thereof, and neglected and omitted to carry and convey the same from the borough

borough of Southwark aforesaid to Town Malling aforesaid, for so long and unreasonable a space of time, that by means thereof the said last-mentioned quantity of linen became of no use or value to the said Leonard, to wit, at London aforesaid. (Count for money paid, laid out, and expended.) Yet the said Edward, not regarding his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Leonard in this behalf, hath not yet paid the said several sums of money, or any of them, or any part thereof, to the said Leonard, although so to do he the said Edward afterwards, to wit, on the same day and year last aforesaid, and often since, at London aforesaid, in the parish and ward aforesaid, hath been requested by the said Leonard; but he to do this hath hitherto wholly refused, and still doth refuse, to the damage of the said Leonard of one hundred pounds; and therefore he brings his suit, &c.

It appears from the case of Dale against Hall, 1. Will. Rep. 281. that a carrier, who undertakes to carry goods, must deliver them safe at all events, except damaged by the act of God or the

king's enemies; and that the declaration may be in *assumpsit*, and need not state the custom. Vide also 1. Salk. 18. 1. Vent. 190. 238. Latch. 127.

LONDON, *ff.* William Reynolds complains of J. Jones, in the custody, &c.: for that whereas the said James Jones, on the tenth day of August in the year of Our Lord 1734, was, and long before and always afterwards, hitherto, hath been and yet is a common carrier of goods and chattels, and for his profit hath used and been accustomed, for and during the whole time aforesaid, to carry goods and chattels for hire and reward from London to Crewkhorne in the county of Somerset, and from Crewkhorne aforesaid to London, for any person or persons desiring such carriage. And whereas, by the law and custom of this kingdom of England, any such common carrier of goods and chattels, who receives the goods and chattels of any person or persons so to be carried for hire and reward, is bound to keep the same without spoiling, detaining, or losing the same, and so that no damage may in any manner arise to such person for the negligence or want of care in such common carrier or his servants. And whereas the said William, on the said tenth day of August in the year of Our Lord 1734, at London aforesaid, to wit, in the parish, &c. was possessed of two butter-tubs of the value of forty shillings; and being so possessed thereof, he the said William, on the same day and year, &c. delivered the said two butter-tubs to the said James to be carried from London aforesaid to Crewkhorne in the county of Somerset aforesaid, and there to be delivered to A. B. (1) and he the said James Jones was to take as a reward for the said car-

(a) Against a common carrier for losing goods.

(1) If for a particular price, then set it forth.

(a) See 1. Mod. Ent. in English, fo. 145. 1. Salk. fo. 10. 704. 1. Complete Attornies Practice, 294. English Prædator.

riage and delivery as aforesaid as much money as he should therefore reasonably deserve to have; and he the said James Jones did then and there take and receive the said two butter-tubs to be carried and delivered in form aforesaid: Yet the said James Jones hath not at any time afterwards hitherto carried or delivered the said butter-tubs in manner as aforesaid, nor redelivered the same, or either of them, to the said William, or any other person by his order; but the said butter-tubs were afterwards, to wit, on the tenth day of October in the year aforesaid, at London, &c. by reason of the negligence of the said James and his servants in that behalf, wholly lost and destroyed, to the damage of the said William of forty shillings; and therefore he brings suit, &c.

Drawn by MR. WARREN.

Declaration against a carrier for not carrying plaintiff's box from B. to B. but leaving it on the road at S. *per quod* a ship, on board of which the goods were to be sent, failed without the box, and plaintiff not only lost the profits of the voyage, but was put to expence in conveying the goods from S. to B.

WARWICKSHIRE, to wit. T. H. and R. H. complain of S. T. being, &c.: for that whereas before and at the time of the making of the promise and undertaking hereinafter next-mentioned, they the said plaintiffs were lawfully possessed of and in a certain case or box containing divers goods, wares, and merchandizes hereinafter particularly mentioned, which they the said plaintiffs were about to send from B. in the said county of Warwick to Bewdley in the county of Worcester, to be there delivered according to their orders and directions, in order to be forwarded from thence to the city of Bristol, to be shipped and consigned on board a certain ship or vessel then lying in the port of B. and then about to sail from thence, to wit, at, &c.; and whereupon afterwards, to wit, on the fourth July 1788, at, &c. in consideration that the said plaintiffs, at the special instance and request of the said Samuel, had delivered, and caused to be delivered to him, the said case or box containing the said goods, wares, and merchandizes, to wit (here the goods sent should be specified,) of great value, to wit, of the value of two hundred pounds of, &c. to be by him the said S. safely and securely carried and conveyed from Birmingham aforesaid to Bewdley aforesaid, and there, to wit, at Bewdley aforesaid, to be delivered according to the orders and directions of them the said plaintiffs, in order that the same might be forwarded, shipped, and consigned as aforesaid, within a reasonable time then next ensuing, for a certain reasonable hire and reward to be therefore paid to the said S. he the said defendant undertook, &c. safely and securely to carry and convey the said case or box, containing the said goods, wares, and merchandizes, so entrusted to his care and custody as aforesaid, from Birmingham aforesaid to Bewdley aforesaid, and there, to wit, at Bewdley aforesaid, to deliver the same according to the orders and directions of the said plaintiffs, in order that the same might be forwarded, shipped, and consigned as aforesaid, within a reasonable time then next ensuing: And the said plaintiffs aver, that the said four days was a reasonable time for the carriage and delivery at Bewdley aforesaid of the said case or box containing the said goods,

goods, wares, and merchandizes aforesaid, so entrusted to the care and custody of the said S. as aforesaid, to wit, at, &c. : Nevertheless the said defendant, not regarding, &c. but contriving, &c. did not carry or convey the said case or box containing the said goods, wares, and merchandizes so entrusted to the care and custody of the said S. as aforesaid, from Birmingham aforesaid to Bewdley aforesaid, and there, to wit, at Bewdley aforesaid, deliver the same according to the orders and directions of the said plaintiffs, for the purposes aforesaid, within the space of four days then next, or at any time within a reasonable time afterwards ; but on the contrary thereof, he the said S. afterwards, to wit, on the same, &c. carried and conveyed the said case or box, containing the said goods, wares, and merchandizes, only part of the way to Bewdley aforesaid, to wit, to a certain place in the road to Bewdley aforesaid, called Stoinbridge in the said county of Worcester, and there, to wit, at Stoinbridge aforesaid, fraudulently, deceitfully, negligently, and remissly kept and detained the said case or box containing the said goods, wares, and merchandizes, for a long space of time, to wit, for the space of three weeks then next following, contrary to the form and effect of the said promise and undertaking of the said S, so by him made as aforesaid ; by reason and means of which said premises, and by and through the neglect, delay, and default of the said Samuel in not carrying and conveying the said case or box containing the said goods, wares, and merchandizes to Bewdley aforesaid, the said ship or vessel, on board of which the said case or box was to have been so as aforesaid shipped and consigned, failed and departed on her said voyage from Bristol aforesaid, without the said case or box containing the said goods, wares, and merchandizes ; and by reason of which said premises they the said plaintiffs were not only prevented and hindered from shipping and consigning the said case or box, containing the said goods, wares, and merchandizes on board the said ship or vessel, and were thereby deprived of divers great gains, profits, and emoluments which they might and would have otherwise gotten, acquired, and obtained therefrom, but also they the said plaintiffs laid out and expended a large sum of money, to wit, the sum of ten pounds of, &c. in and about the carrying and conveying the said case or box, containing the said goods, wares, and merchandizes, from Stoinbridge aforesaid to Bewdley aforesaid, and in endeavouring to have the same shipped on board the said ship or vessel before she failed from Bristol aforesaid ; and by reason of the premises, the said goods, wares, and merchandizes became of no use or value to the said plaintiffs, to wit, at, &c. (2d Count generally, for not carrying the boxes in a reasonable time, omitting that the box was to be sent by a ship, and all the special damage, except that plaintiffs were put to expence in carrying the goods from Stoinbridge to Bewdley ; money paid, &c. ; and had and received.)

Drawn by MR. GRAHAM.

(a) Declaration for negligence at the suit of a person who had been employed to carry goods from L. to F. and who had carried the same a part of the way, and delivered them to defendant so carry the remainder, who lost them, whereby plaintiff was forced to pay for the same.

MIDDLESEX, ff. John Foster complains of — Bolingbroke being, &c. in a plea of trespass on the case: for that whereas the said plaintiff, before the making of the promise and undertaking of said defendant hereinafter next mentioned, to wit, on the day of in the year of Our Lord , at Westminster in said county of Middlesex, had and received a certain parcel of a large value, to be by him safely and securely carried and conveyed from London to Feltwell in the county of Norfolk, and there safely and securely delivered to one Mr. Lascock: And the said John Foster in fact further saith, that having carried and conveyed the said parcel so to him delivered as aforesaid, from London aforesaid to Bury St. Edmunds in the county of Suffolk, he the said John Foster did afterwards, to wit, at Bury St. Edmunds aforesaid, that is to say, at Westminster aforesaid in the said county of Middlesex, at the special instance and request of the said defendant, deliver and cause to be delivered to the said defendant the said parcel so to him the said plaintiff delivered as aforesaid, to be by him the said defendant safely and securely carried and conveyed from thence, that is to say, from Bury St. Edmunds aforesaid to Feltwell aforesaid, and there, to wit, at Feltwell aforesaid, safely and securely delivered to the said Mr. Lascock, for certain reasonable reward to be therefore paid him the said defendant; whereupon he the said defendant, in consideration of the premises, afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid in the said county of Middlesex, undertook and faithfully promised the said plaintiff to forthwith safely and securely carry and convey the said parcel from Bury St. Edmunds aforesaid, to Feltwell aforesaid, and there safely and securely to deliver the same to the said Mr. Lascock: And the said plaintiff in fact further saith, that although the said defendant had and received the said parcel for the purpose last aforesaid, to wit, at Westminster aforesaid: Yet the said defendant, not regarding his said promise and undertaking so by him in manner and form aforesaid made, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, did not forthwith safely and securely carry and convey the said parcel so to him delivered as aforesaid, from Bury St. Edmunds aforesaid to Feltwell aforesaid, and there safely and securely delivered the same to or to the use of the said Mr. Lascock; but on the contrary, the said defendant so carelessly and negligently behaved and conducted himself in the premises, and took so little and such bad care of the said parcel, that the same was afterwards, and after the aforesaid delivery thereof to him said defendant for the purpose aforesaid, to wit, on the day and year aforesaid, and by and through the mere negligence, inattention, and want of care of the said defendant, wholly and totally lost, to wit, at Westminster aforesaid, whereby said plaintiff was afterwards called upon for, and forced and obliged to pay not only the value of the said parcel, but divers other charges and expences incurred and sustained in consequence and by reason and means of the aforesaid breach of the said

(a) See Negligence, Index.

promise and undertaking of the said defendant, amounting in the whole to a large sum of money, to wit, the sum of twenty pounds of lawful money of Great Britain, to wit, at Westminster aforesaid. (Second Count, stating the parcel to have been delivered to plaintiff to be carried to Bury St. Edmunds, and to be safely and securely forwarded from thence to Mr. Lascock's at Feltwell. 3d Count, in consideration that plaintiff had delivered a parcel to be carried from Bury St. Edmunds to Feltwell, and there delivered to Mr. Lascock, he undertook to carry, &c. but did not; *per quod* plaintiff obliged to pay a sum of money generally. Money laid out, and common conclusion. V. LAWES.

See Negligence, Index.

MIDDLESEX, *ff.* John Roberts complains of Jacob Turner beating, &c. in a plea of trespass on the case: for that whereas the same plaintiff heretofore, to wit, on the twenty-second day of November in A. D. 1780, at Westminster in the said county of Middlesex, was lawfully possessed of divers "other" goods and chattels, to wit, one "other" wooden box or chest, and divers, to wit, five hundred pounds weight of "other" starch therein contained, of a large value, to wit, of the value of one hundred pounds, which said "last-mentioned" goods and chattels were then and there lying in a certain cart there then standing and being, to wit, at Westminster aforesaid; and said defendant was then and there also possessed of a certain "other" waggon, and of certain "other" cattle then and there drawing the same, and then and there, by a certain then servant of him said defendant, had the care, government, and direction of the said "last-mentioned" waggon and cattle, to wit, at Westminster aforesaid: Yet the said defendant then and there, by his said servant, so negligently and unskilfully managed and behaved himself in this behalf, and so badly, ignorantly, carelessly, and negligently drove, managed, guided, and governed his said "last-mentioned" waggon and cattle, that the said "last-mentioned" waggon of him said defendant, for want of good and sufficient care and management thereof, and of the said cattle so then and there drawing the same as aforesaid, then and there struck and run against the said cart in which the said "last-mentioned" goods and chattels of the said plaintiff were as aforesaid, with such force and violence, that *the said cart was thereby then and there overset and turned over*, and the said "last-mentioned goods" and chattels of the said plaintiff were thereby then and there thrown out of the said cart into the street there, to wit, at Westminster aforesaid; by means whereof the said "last-mentioned" box or chest of the said plaintiff, containing the said starch as aforesaid, was then and there split, fractured, damaged, broke to pieces and spoiled, and the said starch of said plaintiff to therein contained as aforesaid, was then and there split and thrown out of the same into the street there, "and was thereby then and there," *whereby a great part, to wit, one hundred pounds weight of the said starch of a large value, to wit, of the value of twenty pounds, was then and there entirely damaged and spoiled, and the*

Declaration at the suit of the owner of goods contained in a cart belonging to a third person, against the owner of a waggon, for running it against the cart, whereby plaintiff's goods were spoiled.

residue of the said starch was greatly wetted, dirtied, damaged, lessened in value, and spoiled, to wit, at Westminster aforesaid. And whereas said plaintiff afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, &c. (Add a second Count like the first, only omitting what is in *Italic*, and inserting what is between inverted commas.)

V. LAWES.

See Misfeasance, post.

Declaration in negligence against the owners of an errand-cart, for not delivering goods which had been left at a particular house appointed by defendants for the reception of parcels to be sent by their cart.

If the carriage was paid at the time of delivery, the words *to be* should be omitted.

LONDON, *ff.* Joshua Robins complains of Robert Gladwin and George Gladwin being in the custody, &c. in a plea of trespass on the case, &c. : for that whereas heretofore, to wit, on the first day of January in the year of Our Lord 1783, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said plaintiff, at the “like” special instance and request of the said defendants, had then and there delivered and caused to be delivered at the house of *one* “the said” Daniel Whalley, situate “as aforesaid” *in the parish of St. Botolph without Aldgate, at London aforesaid*, a certain “other” quantity of leather of him said plaintiff, of a large value, to wit, of the value of four pounds of lawful money of Great Britain, to be “by them” safely and securely carried and conveyed by *them said defendants in a certain cart of them said defendants*, from the house of the said Daniel Whalley, situate as aforesaid, to Bromley in the county of Middlesex, and there, to wit, at Bromley aforesaid, to be safely and securely delivered by said defendants to the said plaintiff, for a certain reasonable reward *to be* therefore paid them by said defendants, they said defendants undertook, and then and there faithfully promised the said plaintiff to safely and securely carry and convey said “last-mentioned” leather of him said plaintiff *in manner aforesaid* from the aforesaid house of the said Daniel Whalley, situate as aforesaid, to Bromley aforesaid, in the county of Middlesex aforesaid, and there, to wit, at Bromley aforesaid, safely and securely deliver the same to the said plaintiff : Yet the said plaintiff in fact further says, that although the said defendants on the day and year aforesaid, at London, &c. aforesaid, had and received the said leather of said plaintiff for the purpose aforesaid : Yet the said defendants, not regarding their said promise and undertaking so by them in manner and form aforesaid made, but contriving, &c. to deceive and defraud said plaintiff in this behalf, “have not as yet safely and securely carried and conveyed,” *did not in or by their aforesaid cart, or in any other manner whatsoever, safely and securely carry and convey* said “last-mentioned” leather of said plaintiff from the house of the said Daniel Whalley, situate as aforesaid, to Bromley aforesaid in the county of Middlesex aforesaid, and there, to wit, at Bromley aforesaid, safely and securely delivered the same to the said plaintiff, although a reasonable time for that purpose hath long since elapsed; and although to perform their aforesaid promise and undertaking by them in that respect made as aforesaid, the said defendants have been frequently requested by said plaintiff, to wit, at London,

London, &c. aforesaid; but on the contrary, said plaintiff saith, that said defendants, after the aforesaid delivery of said leather for the purpose aforesaid, to wit, on the day and year aforesaid, at London, &c. aforesaid, so negligently behaved and conducted themselves in the premises, and took so little and such bad care of said leather, that the said leather being of the value aforesaid, was afterwards, to wit, on the day and year last aforesaid, wholly lost to him said plaintiff, to wit, at London, &c. aforesaid. And whereas afterwards, to wit, ^{2d Count}

on the day and year aforesaid, at London, &c. aforesaid, in consideration, &c. (as in first Count, omitting what is in Italic, and inserting what is between inverted commas, till you come to the conclusion, for which substitute the following): but they so to do have hitherto wholly refused and neglected, and said last-mentioned leather of said plaintiff is still wholly undelivered to him said plaintiff, either at Bromley aforesaid or elsewhere, to wit, at London, &c. aforesaid. And whereas heretofore, to wit, on the day and year aforesaid, at London, &c. aforesaid, in consideration that said plaintiff, at the like special instance and request of said defendants, had then and there delivered, and caused to be delivered to said defendants, a certain other quantity of leather of him said plaintiff of a large value, to wit, &c. to be by them safely and securely carried and conveyed from London aforesaid to Bromley aforesaid, in said county of Middlesex, and there, to wit, at Bromley aforesaid, to be safely and securely delivered by said defendants to said plaintiff for certain reasonable reward to be therefore paid them said defendants, they said defendants undertook, and then and there faithfully promised said plaintiff to safely and securely carry and convey said last-mentioned leather of him said plaintiff from London aforesaid to Bromley aforesaid in the county of Middlesex aforesaid, and there, to wit, at Bromley aforesaid, safely and securely deliver same to said plaintiff: And said plaintiff in fact further saith, that although said defendants on the day and year aforesaid, at London, &c. aforesaid, had and received said last-mentioned leather of him said plaintiff for the purpose last aforesaid: Yet said defendants, not regarding, &c. but contriving, &c. to deceive and defraud said plaintiff in this behalf, have not, nor hath either of them as yet safely and securely carried or conveyed said last-mentioned leather of said plaintiff from London aforesaid to Bromley aforesaid in the said county of Middlesex, and there, to wit, at Bromley aforesaid, safely and securely delivered the same to the said plaintiff, although a reasonable time for that purpose hath long since elapsed, and although so to do the said defendants have been frequently requested by said plaintiff, to wit, at London, &c. aforesaid; but they so to do have hitherto wholly refused and neglected, contrary to the tenor and effect of their last-mentioned promise and undertaking, and in breach and violation thereof, and the said last-mentioned leather is still wholly undelivered, uncarried, and unconveyed from London aforesaid to Bromley aforesaid, nor have the said defendants as yet delivered the same to said plaintiff at Bromley aforesaid or elsewhere; whereby said plaintiff hath lost and been

^{Third Count}
more general,
omitting every
thing relative to
the delivery at a
particular house,
and the manner
of conveyance.

deprived

deprived of the use, profit, benefit, and advantage of said leather, to wit, at London, &c. aforesaid. (Money had and received, and common conclusion to that Count; to the damage of said plaintiff of twenty pounds; and therefore he brings his suit, &c. Pledges, &c.

V. LAWES.

See Negligence. Index.

This Cause was tried at the sittings after Term, and plaintiff obtained a verdict.

In the Exchequer, Easter Term, 23. Geo. III.

Declaration in negligence at the suit of a person to whom goods had been delivered for the purpose of being carried from S. to P. plaintiff employed defendant to carry same goods, who in so doing bled a cask of treacle, which plaintiff was obliged to pay for to the owner thereof.

SHROPSHIRE, *vs.* Ann Pugh, a debtor of our sovereign lord the king, cometh before the barons of the exchequer on the day of _____ in this same Term, by A. B. her attorney, and complains by bill against John Payne present here in court the same day, in a plea of trespass on the case, &c.: for that whereas heretofore, to wit, on the twenty-eighth of February 1783, at Shrewsbury in said county of Salop, in consideration that the said plaintiff, at the special instance and request of said defendant, had then and there retained and employed said defendant to carry and for a certain reward to be therefore paid to him said defendant, to safely and securely carry and convey in and by a certain waggon of him said defendant, from Shrewsbury aforesaid to Poole in the county of Montgomery, a certain cask or vessel of treacle, amongst other goods and merchandizes then to be delivered to said plaintiff for the purpose of being carried and conveyed by her the said plaintiff from Shrewsbury aforesaid to Poole aforesaid, and then being at Shrewsbury aforesaid, he the said defendant undertook, and then and there faithfully promised said plaintiff carefully, safely, and securely to take up and receive into his aforesaid waggon, and to thereby safely and securely carry and convey the said cask or vessel of treacle, and other goods and merchandizes, from Shrewsbury aforesaid to Poole aforesaid, and there, to wit, at Poole aforesaid, safely and securely to deliver the same for said plaintiff: And said plaintiff in fact faith, that although said defendant after the making of his aforesaid promise and undertaking, to wit, on the day and year aforesaid, at Shrewsbury aforesaid, had and received the said cask or vessel of treacle, for the purpose of his carrying and conveying the same in manner aforesaid to Poole aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. did not carefully, safely, and securely take up and receive into his said waggon, and thereby safely and securely carry and convey the said cask or vessel of treacle from Shrewsbury aforesaid to Poole aforesaid, and there, to wit, at Poole aforesaid, safely and securely deliver the same for the said plaintiff (although to perform his said promise and undertaking in such respect made as aforesaid, he said defendant was requested by said plaintiff, to wit, on the day and year aforesaid, at W. aforesaid), but omitted and neglected so to do; and on the contrary thereof, after the making of his aforesaid promise and undertaking, and whilst he had the said

said cask or vessel of treacle for the purpose of his carrying the
 same as aforesaid, to wit, on, &c. at, &c. so negligently and care-
 lessly behaved and conducted himself in the premises, and took so
 little and such bad care of the said cask or vessel of treacle, that
 by and through the mere negligence, carelessness, and default of
 said plaintiff and his servants by him employed on that occasion,
 the said cask or vessel of treacle was then and there broke to
 pieces, bulged, split, damaged and spoiled, and the treacle there-
 in contained was totally spilt, poured out, spread abroad, lost, da-
 maged, and spoiled, and rendered of no use or value, whereby said
 plaintiff hath been forced and obliged to pay for the said cask or
 vessel of treacle and the value thereof to the owner or person
 from whom she received the same, for the purpose of carrying and
 conveying thereof as aforesaid, to wit, at Shrewsbury aforesaid in
 the said county of Salop. And whereas afterwards, to wit, on 2d Count.
 the day and year last aforesaid, at, &c. aforesaid, in consideration
 that said plaintiff, at the like special instance and request of said
 defendant, had then and there delivered, and caused to be delivered
 to the said defendant A CERTAIN OTHER CASK, &c. OF TREAC-
 LE, to be by him safely and securely carried and conveyed from S.
 aforesaid to Poole aforesaid, AND THERE, TO WIT, AT P.
 AFORESAID, SAFELY AND SECURELY DELIVERED a certain
 cask or vessel of molasses of a large value, for certain reasonable re-
 ward to be therefore paid him said defendant, he said defendant
 undertook, &c. to take care of the said last-mentioned cask or vessel of
 molasses, and to safely and securely carry and convey THE SAID
 LAST MENTIONED CASK, &c. OF TREACLE, the same from S.
 aforesaid to Poole aforesaid, and there, to wit, at P. aforesaid, safe-
 ly and securely to deliver the same for the said plaintiff: And the
 said plaintiff in fact further saith, that although the said defendant
 after the making of said last-mentioned promise and undertaking,
 to wit, on the day and year last aforesaid, at S. aforesaid, had and
 received the said cask or vessel of TREACLE, (molasses), for the
 purpose of his carrying and conveying the same to Poole aforesaid:
 Yet the said defendant, not regarding, &c. but contriving,
 &c. did not take care of the said cask or vessel of molasses, and safe-
 ly and securely carry and convey the same from S. aforesaid, HATH
 NOT AS YET SAFELY AND SECURELY CARRIED AND CONVEY-
 ED SAID LAST MENTIONED CASK OR VESSEL OF TREACLE to
 Poole, and there, to wit, at P. safely and securely delivered the
 same for the said plaintiff +, although, &c. (as in 1st Count, till
 you come to the *per quod*, which in this Count must be general, as
 follows): whereby said plaintiff hath been forced and obliged to lay
 out and expend a large sum of money, to wit, the sum of pounds
 of lawful money of Great Britain, to wit, at S. aforesaid in the
 said county of Salop. (Like the second, till you come to this 3d Count.
 mark +, omitting what is in *Italic*, and inserting what is in capi-
 tals), although a reasonable time for that purpose has long since
 elapsed, and to perform his said last-mentioned promise and under-
 taking he said defendant was requested by said plaintiff afterwards,

to wit, on the day and year last aforesaid, and often since, to wit at Shrewsbury aforesaid, but he so to do hath hitherto altogether refused and neglected, and the same is still wholly undelivered to the said plaintiff, either at Poole or elsewhere, contrary to the tenor and effect of the said last-mentioned promise and undertaking of the said defendant; whereby the said plaintiff hath been forced and obliged to lay out, expend, and pay a large sum of money, to wit, the sum of other twenty pounds of like lawful money, to wit, at, &c. aforesaid, to the damage of said plaintiff of sixty pounds, whereby she is the less able to satisfy our said lord the king the debts which she owes to his exchequer; and therefore she brings her suit, &c. Pledges, &c.

V. LAWES,

See Negligence, Index.

Trinity Term, 23. Geo. 3.

Declaration in negligence against proprietors of a waggon, for not carrying and delivering goods which they had received for that purpose.

See 3. Will. 429. for a similar precedent, pleas, &c.

Ditto Salk. 703. Trover a misjoinder in a Count against a common carrier for negligence.

(1) "for the said David"
(2) "for him said plaintiff, said last-mentioned chest of said plaintiff and its aforesaid contents,"

(3) "further"
(4) "last mentioned chest of him said plaintiff, and its aforesaid contents,"

LONDON, ss. David King complains of Richard Clark and William Clark, being in the custody, &c. in a plea of trespass on the case, &c.: for that whereas heretofore, to wit, on the twentieth day of October in A. D. 1782, at L. aforesaid, in, &c. &c. in consideration that the said plaintiff, at the special instance and request of said defendants, had then and there delivered and caused to be delivered to them the said defendants divers goods and chattels, to wit, a certain chest and a certain large quantity of leather shoes therein contained, of him the said David, of a large value, to wit, of the value of, &c. of lawful, &c. to be by them safely and securely carried and conveyed (1) *in and by a certain waggon of them said defendants* from the borough of Southwark in the county of Surrey, to Portsmouth in the county of Hants, and there, to wit, at Portsmouth aforesaid, to be safely and securely delivered to one *John Morley*, for certain reasonable reward then and there paid to them the said Richard and William, they the said Richard and William undertook and then and there faithfully promised said plaintiff that they said defendants would safely and securely carry and convey (2) *in and by the said waggon of them said defendants said several goods and chattels so to them delivered as aforesaid*, from said borough of Southwark, in the said county of Surrey, to Portsmouth aforesaid, and there, to wit, at Portsmouth aforesaid, would safely and securely deliver the same to the said *John Morley*: And said plaintiff in fact (3) saith, that although they the said defendants then and there, to wit, on the day and year aforesaid, at L. &c. aforesaid, had and received the said (4) *goods and chattels of him said plaintiff*, for the purpose aforesaid: Yet said defendants, not regarding their said promise and undertaking so by them in manner and form aforesaid made, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud said plaintiff in this behalf, did not safely and securely carry or convey in and by their aforesaid waggon, or in or by any other manner or means whatsoever, the said goods and chattels so delivered as aforesaid, or any part thereof, from the said borough of Southwark, in said county

of

of Surrey, to Portsmouth aforesaid, and there, to wit, at Portsmouth aforesaid, safely and securely deliver the same or any part thereof to the said John Morley, although to perform their aforesaid promise and undertaking so by them in manner and form aforesaid made, they said defendants were requested by said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at London, &c. aforesaid, but omitted and neglected so to do, and therein wholly failed and made default; and on the contrary thereof, they the said defendants, after the delivery of the said goods and chattels of the said David for the purpose aforesaid, to wit, on the day and year aforesaid, at L. &c. aforesaid, so negligently and carelessly behaved and conducted themselves in the premises, and took so little and such bad care of the said goods and chattels, that by and through the mere negligence, carelessness, inattention, and want of care of them said defendants and their servants by them employed on that occasion, the said goods and chattels of the said plaintiff became and were and still are wholly lost to him said plaintiff, to wit, at London, &c. aforesaid. And whereas afterwards, to wit, on the day and year aforesaid, at London, &c. aforesaid, in consideration that said plaintiff, at the like special instance and request of said defendants, had then and there delivered and caused to be delivered to them said defendants a certain other chest containing a certain other large quantity of shoes of him said plaintiff, of a large value, to wit, of the value of pounds, of like lawful money, to be by them, &c. (as in 1st Count till you come to this mark X, leaving out what is in Italic and inserting what is in the margin, then proceed as follows): hath not as yet safely and securely carried or conveyed the said last-mentioned chest and its aforesaid contents, or any part thereof, for him said plaintiff from the said borough of Southwark, in said county of Surrey, to Portsmouth aforesaid, and there, to wit, at Portsmouth aforesaid, safely and securely delivered the same or any part thereof, although a reasonable time for that purpose hath long since elapsed, and although to perform their said last promise, &c. &c. (as in 1st Count); but they so to do have, and each of them hath, hitherto wholly refused and neglected; and the said last-mentioned chest of him said plaintiff, with its aforesaid contents, is still wholly uncarried, unconveyed, and undelivered for him the said David either to or at Portsmouth aforesaid, or elsewhere, contrary to the tenor and effect of the said last-mentioned promise and undertaking of said defendants, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas, (money had and received; and common conclusion.)

2d Count.

3d Count.

V. LAWES.

See Negligence, Index.

N. B. This cause was tried at the sittings after Trinity Term 1783, when plaintiff obtained a verdict with 1. damages.

Assumpsit lies for consignee against carrier for not delivering, 5. Burr. 2680.

Trover for consignee, 3. P. W. 186. Bull. Ni. Pri. 36. or *assumpsit* ibid. 72.—If goods are stolen from or lost by carrier, trover will not lie, but *assumpsit* upon the contract, 5. Burr. 2825.—Consignor may take back the goods in *transitu* before delivery over to consignee, he becoming a bankrupt, MSS. Buller Ni. Pri. 36.

B. R.

B. R. Michaelmas Term, 23. Geo. 3.

Declaration against the proprietors of a stage-coach, at suit of a passenger, for the loss of her reasonable luggage.

MIDDLESEX, *ff.* Mary Haslem complains of John Bedford, Robert Greatrex, and Thomas Rogers, being in the custody, &c. in a plea of trespass on the case, &c.: for that whereas before and at the time of the making the promise and undertaking of said defendants hereafter next-mentioned, they the said defendants were proprietors and owners of a certain stage-coach for the carriage and conveyance of passengers with their reasonable luggage from London to Epping, in the county of Essex, for certain reasonable reward or hire to be therefore paid to them, to wit, at Westminster, in the said county of Middlesex; and thereupon on the sixteenth day of May in A. D. 1782, at Westminster, in said county of M. in consideration that the said plaintiff had then and there taken a place in the said coach of them said defendants, as a passenger in and by the same from London aforesaid to Epping aforesaid, and had undertaken to go by the same as such passenger as aforesaid, at the usual and accustomed rate or price for such passengers, and had then and there delivered to the said defendants a certain box or trunk containing divers goods and chattels of her said plaintiff, of a large value, to wit, of the value of twenty pounds of lawful money of Great Britain, as and for the reasonable luggage of her the said plaintiff, as such passenger in and by the said coach as aforesaid, to be safely and securely carried and conveyed by them the said defendants by their aforesaid coach from London aforesaid to Epping aforesaid, and there, to wit, at Epping aforesaid, to be safely and securely delivered to her the said plaintiff, they the said defendants undertook, and then and there faithfully promised the said plaintiff to safely and securely carry and convey her the said plaintiff, as such passenger, in and by their said coach as aforesaid, from London aforesaid to Epping aforesaid, together with her aforesaid luggage, and there, to wit, at Epping aforesaid, safely and securely to set down her the said plaintiff from and out of the said coach, and safely and securely deliver the aforesaid trunk or box and its aforesaid contents to her the said plaintiff: And the said plaintiff in fact further saith, that although the said box or trunk of her the said plaintiff, with its aforesaid contents, was reasonable luggage for her the said plaintiff as such passenger in and by the said coach of said defendants as aforesaid; and although said defendants, on the day and year aforesaid, had and received same of her said plaintiff, as such reasonable luggage as aforesaid, to wit, at Westminster aforesaid; and although the said defendants did afterwards, to wit, on the day and year aforesaid, at Westminster aforesaid, carry and convey her the said plaintiff in and by the aforesaid stage-coach from London aforesaid to Epping aforesaid, and there, to wit, at Epping aforesaid set her down: Yet the said plaintiff in fact further saith, that said defendants, not regarding, &c. but contriving, &c. to deceive and defraud said plaintiff in this behalf, have not as yet safely and securely carried or conveyed in and by their aforesaid coach, or in any other manner whatsoever, the aforesaid trunk or box of said plaintiff,

plaintiff, and its aforesaid contents, so delivered to and received by them as aforesaid, from London aforesaid to Epping aforesaid, and there, to wit, at Epping aforesaid, safely and securely delivered the same to her said plaintiff (although a reasonable time for that purpose hath long since elapsed, and although to perform their aforesaid promise and undertaking by them in that respect made, they said defendants were requested by said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at Westminster aforesaid); but on the contrary, the said plaintiff saith, that after the delivery thereof to them said defendants as aforesaid, they said defendants so negligently, inattentively, and carelessly behaved and conducted themselves, and took so little and such bad care of the said trunk or box, and of its aforesaid contents, that the said trunk or box, and its contents, being of the value aforesaid, were, by and through such negligence, inattention, and want of care of them the said defendants, wholly lost to said plaintiff, to wit, at Westminster aforesaid. And ^{2d Count,} whereas on the day and year aforesaid, at W. aforesaid, in consideration that said plaintiff, at the like special instance and request of defendants, had then and there delivered to them said defendants a certain other trunk or box, containing divers other goods and chattels of said plaintiff, of a large value, to wit, &c. to be by them safely and securely delivered and conveyed from L. aforesaid to E. aforesaid, in said county of Essex, and there, to wit, at E. aforesaid, safely and securely delivered to said plaintiff *for certain reasonable hire or reward to be therefore paid to them said defendants*, they said defendants undertook, &c. that they said defendants would safely and securely carry and convey said last-mentioned trunk or box of her said plaintiff, with its aforesaid contents, from L. aforesaid to E. aforesaid, in said county of Essex, and there, to wit, at E. aforesaid, would safely and securely deliver same to the said plaintiff. And whereas, &c. (like the 2d Count, ^{3d Count,} only omitting every thing relative to the hire or reward): And the said plaintiff in fact further saith, that although said defendants, on the day and year aforesaid, at W. aforesaid, had and received the said several trunks or boxes of her said plaintiff in the said two last-mentioned promises and undertakings specified, with their aforesaid contents, for the several and respective purposes aforesaid; and although a reasonable time for the carriage and conveyance of the same from L. aforesaid to E. aforesaid, and for the delivery thereof there, hath long since elapsed: Yet said defendants, not regarding their said two last-mentioned promises and undertakings so by them in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud said plaintiff in this behalf, have not as yet safely and securely carried and conveyed said several trunks or boxes of said plaintiff in those promises and undertakings mentioned, with their aforesaid contents, or either of them, or any part of their contents, from L. aforesaid to E. aforesaid, and there delivered the same to her said plaintiff (although so to do they said defendants were

were requested by the said plaintiff afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at W. aforesaid); but they so to do have always hitherto refused and neglected, and the said several trunks or boxes with their aforesaid contents, are still wholly undelivered to her said plaintiff, contrary to the tenor and effect of said two last-mentioned promises and undertakings of said defendants, to wit, at Westminster aforesaid. (Money had and received, and account stated, and common conclusion to those two Counts. Damages fifty pounds. Suit, &c. Pledges, &c.)

I take this case to be circulated according to the first Count; but lest the contrary should be the fact, more general Counts are inserted. V. LAWES.

Michaelmas Term, 21: Geo. 3.

COTTINGHAM AND OTHERS } LONDON, ss. John Cot-
against }
PRINCE. } tingham and Matthew Spragg

Declaration against a carrier, for negligence in suffering goods to be stolen from his cart.

complain of John Prince, being in the custody of the marshal, &c. in a plea of trespass on the case, &c.: for that heretofore, to wit, on the twenty-fourth day of December in the year of Our Lord 1779, at London aforesaid, in the parish of St. Andrew, Holborn, in the ward of in consideration that the said plaintiffs, at the special instance and request of the said defendant, had delivered to the said defendant a certain box with divers *lawful and unprohibited* goods, wares, and merchandizes contained therein of them the said plaintiffs of a large value, to wit, of the value of thirteen pounds and four shillings, to be safely and securely carried and conveyed in a certain cart of him the said defendant from London aforesaid, to wit, from a certain inn known by the name or sign of the King's-Arms, situate in a certain place called Holborn-bridge, in London aforesaid, to Newbury in the county of Berks, and then and there, to wit, at Newbury aforesaid, to be safely and securely delivered to the use of the said plaintiffs, at the house of William Spragg, in Newbury aforesaid, in the said county of Berks, for a certain reasonable price or reward to be therefore paid him the said defendant, he the said defendant then and there, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said plaintiffs to safely and securely carry and convey the said box, and the said goods, wares, and merchandizes therein contained, from London aforesaid, that is to say, from the aforesaid inn, situate as aforesaid, to Newbury aforesaid, and there safely and securely deliver the same to the use of the said plaintiffs, at the house of the said William Spragg, in Newbury aforesaid in the said county of Berks; and although the said defendant then and there, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, had and received the said box, with the said goods, wares, and merchandizes therein contained, to carry, convey and deliver the same as aforesaid: Yet the said defendant, not regarding his promises and undertakings so by

by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to injure the said plaintiffs, did not safely and securely carry and convey the said box and the said goods, wares, and merchandizes therein contained as aforesaid, from London aforesaid, that is to say, from the said inn situate as aforesaid, to Newbury aforesaid, and there safely and securely deliver the same to the use of the said plaintiffs, at the house of the said William Spragg, in Newbury aforesaid, in the said county of Berks, according to the tenor and promise of his undertaking aforesaid (although to perform the same the said defendant was requested by the said plaintiffs afterwards, to wit, on the day and year aforesaid; at London aforesaid, in the parish and ward aforesaid); but on the contrary thereof, he the said defendant so carelessly and negligently behaved and governed himself, and took such little and such bad care of the said box and of the said goods, wares, and merchandizes therein contained, that by and through the mere carelessness and negligence of the said defendant, the said box, and the said goods, wares, and merchandizes therein contained in the said carriage thereof from London aforesaid, that is to say, from the said inn situate as aforesaid, to Newbury aforesaid, and before the delivery of the same at Newbury aforesaid, to the use of the said plaintiffs as aforesaid, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, were stolen, taken and carried away from and out of the said cart of the said defendant and wholly lost to the said plaintiffs, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas also heretofore, to wit, on the twenty-fourth day of December in the year 1779 aforesaid, at London aforesaid, in the parish and ward aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had delivered to the said defendant a certain other box with divers other *lawful and unprohibited* goods, wares, and merchandizes of them the said plaintiffs, of a large value, to wit, of the value of thirteen pounds and four shillings, to be safely and securely carried and conveyed in a certain other cart of him the said defendant from London aforesaid to Newbury in the county of Berks, and there, to wit, at Newbury aforesaid, to be safely and securely delivered to the use of the said plaintiffs in a reasonable time, at the house of one William Spragg, in Newbury aforesaid, for a certain price or reward to be therefore paid the said defendant, he the said defendant, then and there, to wit, on the day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook and faithfully promised the said plaintiffs to safely and securely carry and convey the said last-mentioned box and the said goods, wares, and merchandizes therein contained, from London aforesaid to Newbury in the county of Berks, and there safely and securely to deliver the same to the use of the said plaintiffs in a reasonable time at the house of the said William Spragg in Newbury aforesaid: And although the said defendant then and there, to wit, on the day and year aforesaid, at London aforesaid, in the parish

ad Count,

parish and ward aforesaid, had and received the said last-mentioned box with the said goods, wares, and merchandizes therein contained as aforesaid, to carry, convey, and deliver the same as aforesaid: Yet the said defendant, not regarding his said last-mentioned promises and undertaking by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to injure the said plaintiffs in this behalf, hath not as yet safely and securely carried and conveyed the said last-mentioned box and the goods, wares, and merchandizes therein contained, from London aforesaid to Newbury in the said county of Berks, and there safely and securely delivered the same to the use of the said plaintiffs, at the house of the said William Spragg, in Newbury aforesaid, although a reasonable time for that purpose hath long since elapsed: And although to perform his said last-mentioned promise and undertaking in this respect the said defendant was requested by the said plaintiffs afterwards, to wit, on the first day of January in the year of Our Lord 1780, and often both before and afterwards, to wit, at London aforesaid, in the parish and ward aforesaid: But he so to do hath hitherto wholly neglected and refused, and still refuses so to do, to the said plaintiffs their damage of forty pounds; and therefore they bring their suit, &c. Pledges, &c.

V. LAWES.

AGAINST CARRIERS BY WATER.

LONDON, ff. George Bruinswick and Daniel Henry Kerrick complain of Gilbert Smithson, being in, &c.; for that whereas one Michael Srantz heretofore, and in the lifetime of one Peter Richardson since deceased, and whom the said Gilbert hath survived, and before the first day of, &c. mentioned in a certain act of parliament made and passed in the twenty-sixth year of the reign of our lord the now king, entitled, "An Act to explain" (here set forth the title of the act), to wit, on, &c. at, &c. shipped, and caused to be shipped as the shipper thereof, in and on board a certain ship or vessel called the Ann, whereof one Mark Dawson was then master, and whereof the said Gilbert and the aforesaid Peter Richardson were then and there owners, which said ship or vessel was then riding at anchor in the harbour of, &c. and bound from thence for the port of Hull in this kingdom, certain goods and merchandizes, to wit, forty lasts of linseed, &c. of a large value, to wit, of the value of one thousand three hundred and thirty-seven pounds seven shillings and sixpence of lawful money of Great Britain, to be carried and conveyed in and by the said ship or vessel from the said harbour of, &c. to the aforesaid port of H. and there, to wit, at the said port of H. to be delivered unto shipper's order, or to his assigns, he or they paying freight for the same, with

Declaration by surviving partner against defendants, who were owners of a ship, for not delivering goods that were put on board their ship, whereby they were lost, &c. &c.

with primage and average accustomed, which said goods and merchandizes were then and there taken, accepted, and received in and on board the said ship or vessel for the purpose aforesaid, he the said Mark Dawson as such master thereof as aforesaid, who thereupon, and as such master of the said ship or vessel, then and there made out and delivered unto the said Michael Sfantz, a certain bill of lading of the said goods and merchandizes : And the said George and Daniel Henry in fact further say, that the said goods and merchandizes being so laden and put on board the said ship as aforesaid, and the said Michael Sfantz being such shipper of the said goods and merchandizes as aforesaid, he the said M. T. as such shipper of the said goods and merchandizes, afterwards, in the lifetime of the said P. R. and before the arrival and delivery of the aforesaid goods and merchandizes at the aforesaid port of H. to wit, on, &c. at, &c. according to the custom of merchants in that particular, indorsed and delivered over to the said George and Daniel Henry the said bill of lading of the said goods and merchandizes, and thereby then and there constituted them the order of him the said M. T. as to the said goods and merchandizes, and appointed and entitled them as such order to have and receive the same upon their arrival at the aforesaid port of H. subject to the payment of such freight and charges as aforesaid ; whereof and of which said several premises the said Gilbert and the aforesaid P. R. afterwards, in the lifetime of the said Peter R. to wit, on, &c. had notice ; and thereupon, in consideration of such several premises as aforesaid, and also in consideration that the said said George and Daniel Henry had then and there undertaken and faithfully promised the said Gilbert and P. R. as such owners of the said ship or vessel as aforesaid, to pay them the said Gilbert and P. R. as such owners of the said ship or vessel, in the lifetime of the said P. R. to wit, on, &c. at, &c. undertook, &c. the said George and Daniel Henry to take care of and deliver the said goods and merchandizes at the said port of H. to and for them the said George and Daniel Henry, upon their arrival at the said port ; and although the said ship or vessel afterwards, in the lifetime of the said P. R. arrived at the said port of H. with the said goods and merchandizes in and on board her ; and although the said goods or merchandizes could or might have been there delivered for the said George and Daniel Henry, and ought so to have been ; and although the said George and Daniel Henry were then and there ready and willing to pay and bear such freight and charges thereon as aforesaid, to wit, at, &c. : Yet the said Gilbert and P. R. not regarding their duty as such owners of the said ship or vessel as aforesaid, nor their said promise and undertaking in that behalf, but contriving to defraud and injure the said George and Daniel Henry, did not, ~~x~~ upon the said arrival of the said ship or vessel at the said port of H. as aforesaid, or at any other time or place, deliver, nor were nor have the said goods and merchandizes, or any part thereof, been as yet delivered unto or for them the said plaintiffs, contrary to the duty of the said defendant and the said P. R. deceased, as such owners of the said

2d Count.

ship or vessel, and in breach and violation of their aforesaid promise and undertaking, whereby the said goods and merchandizes became and were, and are wholly lost unto them the said plaintiffs, and they have in consequence thereof lost the sale and disposal of the said goods and merchandizes, and all profits and advantages that would otherwise have arisen and accrued to them from such sale, to wit, at, &c. &c. And whereas, &c. &c. (go on with the 2d Count same as the first till you come to this mark x, then proceed thus :) take care of nor deliver, nor are the said goods and merchandizes, or any part thereof, as yet delivered to or for them the said George and Daniel Henry at the said port of Hull, or elsewhere; but on the contrary, the said George and Daniel Henry in fact say, that upon and after the arrival of the said last-mentioned ship or vessel at the said port of Hull, and before the delivery of the said last-mentioned goods and merchandizes, or any part thereof, to or from the said plaintiffs, and whilst the said George and Daniel Henry so had the care thereof as aforesaid, and before the making of the said act of parliament so made in the twenty-sixth year of the reign of our lord the now king as aforesaid, and also before the said first day of September 1786, in the said act mentioned, to wit, on, &c. at, &c. so little and such bad care was taken of the said last-mentioned goods and merchandizes, that the said goods and merchandizes were, before the making of the said last-mentioned act of parliament, and also before the said first day, &c. in the said act mentioned, and from thence hitherto, have been and still are wholly lost to them the said George and Daniel Henry, and they have in consequence thereof lost the sale and disposal of the said goods and merchandizes, and all profits and advantages that would otherwise have arisen and accrued to them from such sale, to wit, at, &c. &c.

V. LAWES.

See Assumpsit against Owners of Ships, post.

Declaration; 1st Count against defendant for taking such bad care of corn entrusted to him by plaintiff to keep, and of the barge wherein same was kept, that the barge was forced from its moorings and sunk, *per quod* the corn was spoiled.

LONDON, to wit. A. Y. and W. S. complain of J. P. being, &c. : for that whereas, on the tenth March 1788, at, &c. in consideration that the said plaintiffs had, at the special instance and request of the said defendant, delivered, and caused to be delivered to the said defendant, divers large quantities of corn and grain of them the said plaintiffs, to wit, two hundred quarters of wheat, one hundred quarters of beans, and one hundred quarters of peas, of great value, to wit, of the value of one thousand pounds of, &c. to be by the said defendant taken great care of, and safely and securely kept in a certain barge, lighter, or craft of and belonging to the said defendant, then lying and being in the river of Thames, until he the said defendant should receive the order and directions of the said plaintiffs for delivering the same for a certain hire or reward to be therefore paid the said defendant, he the said defendant undertook, and to the said plaintiffs then and there faithfully promised, that he the said defendant would take great care of, and would safely and securely keep the said corn and grain in his said barge, lighter, or craft, during the time aforesaid: Yet the said defendant,

defendant, not regarding, &c. but contriving, &c. did not take due care of, nor did he the said James safely and securely keep the said corn and grain so delivered to him and intrusted to his care as aforesaid, or any part thereof; but the said defendant, on the contrary thereof, so negligently, carelessly, and remissly conducted himself, and the said barge, lighter, or craft, containing the said corn and grain, in that respect, and took so little and such bad care thereof, that afterwards, to wit, on the same day and year aforesaid, at, &c. by and through the mere carelessness, negligence, mismanagement, misconduct, remissness, unskilfulness, and default of the said defendant and his servants, the said barge, lighter, or craft of the said defendant, containing the said corn and grain, was forced and driven from its moorings, and was then and there sunk and foundered; by reason of which said premises the said corn and grain, and every part thereof, was then and there wetted, and wholly spoiled and rendered of no use or value to the said plaintiffs, and the said corn and grain, and every part thereof, then and there was, and still is, wholly lost to them, to wit, at, &c. contrary to the form and effect of the said promise and undertaking of the said James so by him made as aforesaid. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs had, at the like special instance and request of the said defendant, delivered, and caused to be delivered to him, divers other large quantities of corn and grain of and belonging to the said plaintiffs, to wit, two hundred quarters of wheat, &c. of other great value, &c. to be by the said defendant taken great care of, and safely and securely kept in a certain decked barge, lighter, or craft, with the hatches thereof fastened and locked down, until he the said defendant should receive the orders and directions of the said plaintiffs for delivering the same to some other person or persons at and for a certain other hire or reward to be therefore paid to the said defendant, he the said defendant undertook, and to the said plaintiffs then and there faithfully promised, that he would take great care of, and would safely and securely keep the said last-mentioned corn and grain of the said plaintiffs during the time last aforesaid, and that he should and would during such time keep the said last-mentioned corn and grain of the said plaintiffs, so entrusted to his care as last aforesaid, in such decked barge, lighter, or craft, and with the hatches thereof locked and fastened down in manner aforesaid; Yet the said defendant, not regarding, &c. but contriving, &c. did not take any care of, nor did he safely or securely keep the said last-mentioned corn and grain so intrusted to his care as last aforesaid, nor did he keep the same in a decked barge, lighter, or craft, nor with any hatches thereto, nor with the hatches locked and fastened; but on the contrary thereof, carelessly, negligently, and remissly kept the said last-mentioned corn and grain of the said plaintiffs, so entrusted to his care as last aforesaid, in a certain open and undecked barge, lighter, or craft of the said defendant, without any hatches thereto, or hatches locked or in any manner fastened down, lying and being on the said river Thames;

ad Count, for putting the corn into an open barge, and without the hatches fastened down; which barge, through defendant's negligence, broke from her moorings and sunk; and by reason of the hatches being open, the water got to the corn, which would not otherwise have happened, and the corn was spoiled.

which said last-mentioned barge, lighter, or craft, containing the said last-mentioned corn and grain so delivered and intrusted to the care of the said defendant as last aforesaid, afterwards, to wit, on, &c. at, &c. was forced and driven from its moorings, and was then and there sunk and foundered; by reason whereof, and of the said barge, lighter, or craft being opened and undecked, and without hatches, the water entered and came into the aforesaid barge, lighter, or craft, which it would not otherwise have done in case the same barge, lighter, or craft had been decked, or with hatches thereto, and thereby wetted, damaged, and totally spoiled the said corn and grain, whereby the same became and were of no use or value to the said plaintiffs, and every part and parcel thereof was and still is wholly lost to them, to wit, at, &c. contrary, &c. &c.

And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs had, at the like special instance and request of the said defendant, delivered, and caused to be delivered to the said defendant, a certain other large quantity of corn and grain of the said plaintiffs, to wit, two hundred quarters of wheat, &c. of other great value, &c. to be by the said defendant taken great care of, and safely and securely kept, watched, and guarded, in a certain other barge, lighter, or craft of and belonging to the said defendant, then lying and being on the river Thames aforesaid, and protected and secured against the water, until the said defendant should receive the orders and directions of the said plaintiffs for delivering the same to some other person or persons at and for a certain other hire or reward to be therefore paid to the said defendant, he the said defendant undertook, and to the said plaintiffs then and there faithfully promised, that he would take great care of, and would safely and securely keep, watch, and guard the said last-mentioned corn and grain, and would properly protect, cover, and secure the same against the water during the time last aforesaid: Yet, &c. &c. the said defendant did not take any care of, nor did he safely or securely keep, watch, or guard the said last-mentioned corn and grain of the said plaintiffs so intrusted to his care as last aforesaid, nor did he properly or in any manner protect, cover, or secure the same against the water; but on the contrary thereof, carelessly, negligently, and remissly kept, put, and placed the said last-mentioned corn and grain, so delivered to him and intrusted to his care as last aforesaid, in an open and undecked barge, lighter, or craft of him the said defendant, lying on the said river Thames, without any guard, protection, or covering against the water; which said last-mentioned barge, lighter, or craft, containing the said last-mentioned corn and grain so delivered to the said defendant and intrusted to his care as last aforesaid, afterwards, to wit, on, &c. at, &c. was driven from its moorings, and was then and there sunk and foundered; by reason and means whereof, and of the said last-mentioned barge, lighter, or craft, being open and undecked, and without any guard, protection, or covering against the water, the water entered and came into the said aforesaid barge, lighter, or craft, which it would not otherwise have

9d Count same as 2d, only stating that defendant put the corn into a barge without any protection from the water.

have done, and thereby wetted, damaged, and totally spoiled the said last-mentioned corn and grain, whereby the same became and was rendered of no use or value to the said plaintiffs, and the same and every part thereof was, and still is, wholly lost to them, to wit, at, &c. contrary, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the like special instance and request of the said defendant, had delivered, and caused to be delivered to the said defendant, a certain large quantity of clover seed, to wit, fifty sacks of clover seed of and belonging to the said plaintiffs, of great value, to wit, of the value of one thousand pounds, to be by the said defendant taken great care of, and safely and securely kept, laid, and deposited in a warehouse until the said defendant should receive the orders and directions of the said plaintiffs for delivering the same to some other person or persons for certain other hire or reward to be therefore paid to the said defendant, he undertaking, and to the said plaintiffs then and there faithfully promised, that he would take great care of the said clover seed of the said plaintiffs, and would safely and securely keep, lay, and deposit the same in a warehouse during the time last aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. did not take due care of the said clover seed so entrusted to his care as aforesaid, nor did the said defendant keep, lay, or deposit the said clover seed in a warehouse; but on the contrary thereof, afterwards, to wit, on, &c. at, &c. laid and deposited the said clover seed in a certain open and undecked barge, lighter, or craft belonging to the said defendant, then lying and being on the river Thames aforesaid; which said last-mentioned barge, lighter, or craft, containing the said clover seed, afterwards, to wit, on, &c. at, &c. was forced and driven from its moorings, and was then and there sunk and foundered; by reason and means of all which said last-mentioned premises, the said clover seed, and every part thereof, was wetted, damped, damaged, and totally spoiled, and rendered of no use or value to them the said plaintiffs, and the same, and every part thereof, was and still is wholly lost to them, to wit, at, &c. contrary, &c. (5th Count, making the promise to be to take due and proper care of the clover seed, without mentioning the warehouse, and stating the carelessness as before; common Counts.)

4th Count, for not putting clover seed committed to his care into a warehouse, but on the contrary putting same into an open barge, which sinking, the clover seed was spoiled.

W. BALDWIN.

Defendant pleaded *non assumpsit*; and on the trial plaintiff was nonsuited, because defendant proved plaintiff had permitted him to keep the corn, &c. in an open barge.

See Negligence, Index.

LONDON, to wit. J. S. E. M. and J. P. complain against J. M. being, &c. : for that whereas before and at the time of the making the promise and undertaking of the said John hereinafter mentioned, to wit, on the fifth October 1784, at London, &c. the said John was owner of a certain ship or vessel called the Elbe,

Dedation against defendant (who was the owner of a ship, and had, in consideration of plaintiff's delivering it and

delivering and shipping a cask of silver on board, promised to carry it to C.) for not delivering it; and through defendant's negligence same was stolen out of the ship.

S 4

whereof

whereof one J. G. was master and commander, then riding at anchor on the river Thames, at the port of London aforesaid, and bound to and about to sail from thence to the port of Hamburg in parts beyond the seas; and the said John being such owner of the said ship or vessel as aforesaid, then bound to and about to sail to the port of Hamburg aforesaid, in consideration that the said plaintiff, at the special instance and request of the said John, would ship and deliver in good order and well conditioned, in and on board the said ship or vessel of the said John, a certain cask of silver of great value, to wit, of the value of two hundred and fifty pounds of, &c. to be safely and securely carried and conveyed to his said ship or vessel from the river Thames aforesaid to the port of H. aforesaid, and there, to wit, at the port of H. delivered in like good order and well conditioned (the dangers of the seas only excepted), to the order of the said plaintiffs, at and for a certain reasonable freight or reward, to wit, one quarter per cwt. or by the hundred, to be therefore paid by the said plaintiffs to the said John for the freight, carriage, and conveyance thereof, with prime and average accustomed, he the said John (*assumpsit, &c.*) safely and securely to keep, carry, and convey the said cask of silver in his said ship or vessel from the river Thames aforesaid to the port of H. aforesaid, and there, to wit, at H. aforesaid, deliver the said cask of silver in like good order and well conditioned (the dangers of the seas only excepted), to the order of the said J. S. E. M. and J. P. And the said plaintiffs in fact say, that they, relying on the said promise and undertaking of the said John, and in hopes of the faithful performance thereof, afterwards, to wit, on, &c. at, &c. did ship in good order and good conditioned in and on board the said ship or vessel of him the said John the said cask of silver, safely and securely kept, carried, and conveyed in his said ship or vessel from the river of Thames aforesaid to the port of H. aforesaid, and there, to wit, at the port of H. aforesaid, to be safely delivered in like good order and condition (the danger of the seas only excepted) to the order of the said plaintiffs: Nevertheless the said John, not in the least regarding, &c. but contriving, &c. hath not yet safely or securely carried or conveyed the said cask of silver, or any part thereof, so shipped and delivered in and on board the said ship or vessel from the port of L. aforesaid to the port of H. aforesaid, and there, to wit, at the port of H. aforesaid, delivered the same cask of silver, or any part thereof, in like good order and well-conditioned, to the order of the said plaintiffs; but on the contrary thereof, hath himself wholly omitted and neglected so to do; and by and through the negligence and default of the said John, and of the said J. Goddard the said master and commander of the said ship or vessel, and of other the sailors, mariners, and servants of the said John on board the said ship or vessel, and for want of their due, safe, and proper keeping and guarding and custody of the said cask of silver in and on board the said ship or vessel, the same cask of silver hath been and was stolen and taken out of the said ship or vessel, and hath been and still is wholly lost to the said plaintiff, to wit,

wit, at, &c. (2d Count same as first, only *had* instead of *would*. Money paid, laid out, &c. had and received; and an account stated: breach to the three last Counts.)

While the ship remained in the Thames it was boarded in the night by a party of men, and several casks of dollars of divers shippers taken thereout. The robbers were afterwards apprehended, convicted, and hanged. The present action was brought by the owners of one of the casks of silver against the defendant, who was the most responsible owner of the ship, to try the question, Whether the owners were liable to the shippers for this loss by theft? The ship had in fact left her moorings, and was ready to

sail; and the defense set up was, that the ship had commenced her voyage, and that the owners of the said vessel were not liable for invasion and loss by pirates. But Lord Mansfield said, that whilst the ship remained in the Thames the owners were liable; and belinked it to the case of a common carrier, who is answerable for loss by thieves; and plaintiff had a verdict. *Drawn by MR. CROMPTON.*

See Assumpsit against Owners of Ships, post. and Negligence, Index.

LONDON, *ff.* Ulick Cormiek complains of Stephen Tutt, being, &c.; for that whereas the said Stephen Tutt, on the twentieth day of August A. D. 1748, at London aforesaid, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, in consideration that the said Ulick, at the special instance and request of the said Stephen, had delivered to the said Stephen one bureau with divers goods and chattels, that is to say, &c. contained therein of the said Ulick, of the value of, &c. to be carried by the said Stephen on board a certain ship or vessel called the Memblau, whereof the said Stephen was master, from Plymouth in the county of Devon to the port of London, for a certain reward or hire to be therefore paid by the said Ulick to the said Stephen, he the said Stephen undertook, and then and there faithfully promised the said Ulick, safely and securely to carry the said goods and chattels from Plymouth aforesaid to the port of London aforesaid (the dangers of the seas only excepted), and there, to wit, at the port of London, safely to deliver the said bureau, with the said goods and chattels therein contained, to the said Ulick; and although the said ship afterwards, to wit, on first October in the year aforesaid, safely arrived at the port of London aforesaid; and although the said Stephen was no way hindered or prevented by the dangers of the seas from delivering of the said bureau, with the said goods and chattels therein contained, to the said Ulick at the port of L. aforesaid safely and securely: Yet the said Stephen, contriving, &c. to deceive, &c. the said Ulick in this behalf, hath not delivered the said bureau, goods, and chattels, or any part thereof, to the said Ulick, at the port of London aforesaid, or elsewhere (although to do this he the said Stephen afterwards, to wit, on first November A. D. 1748 aforesaid, at London aforesaid, in the parish, &c. aforesaid, by the said Ulick was requested); but to deliver the said bureau, goods, and chattels, or any of them to the said Ulick, hath hitherto wholly refused, &c. (Conclude as before.)

Special assumpsit, not delivering goods to carry by water, but after arrival of ship suffered same to be lost or stolen.

MONMOUTHSHIRE,

Declaration against defendants, for not delivering three baskets of fish sent by their vessel across the river Severn, from the Old Passage to another ferry,

MONMOUTHSHIRE, to wit. George Tomlinson complains of James Blint, Thomas Jane, and Walter George, being, &c.: for that whereas on the eighteenth April 1787, at Usk, in the said county of Monmouth, in consideration that the said George, at the special instance and request of the said James, Thomas, and Walter, would deliver, and cause to be delivered, to them the said James, Thomas, and Walter, divers, to wit, three large baskets of fish of and belonging to him the said George, of great value, to wit, of the value of twenty pounds of lawful money of Great Britain, to be by them taken care of, and safely and securely carried and conveyed in a certain boat or vessel of and belonging to them the said James, Thomas, and Walter, across a certain river called the river Severn, at a certain place or ferry called the Old Passage or Ferry, otherwise Beachly Ferry, in the county of Gloucester, to a certain other place or ferry on the opposite coast called the Aust Ferry or Passage, in the same county, and there, to wit, at Aust Ferry or Passage, to be delivered at a certain house called the Ferry or Passage House, for a certain reasonable price or reward to be therefore paid to the said James, Thomas, and Walter, for the carriage and conveyance thereof, they the said J. T. and W. undertook, and to the said George then and there faithfully promised, to take care of, and safely and securely keep, carry, and convey the said several baskets of fish, and each and every of them, in the said boat or vessel of and belonging to them the said J. T. and W. across the said river Severn, at the said place or ferry called the Old Passage or Ferry, otherwise Beachly Passage or Ferry, to the said other place or ferry on the opposite coast called Aust Ferry or Passage, both in the said county of Gloucester, and there, to wit, at Aust Ferry or Passage aforesaid, safely to deliver the same at the said house or place called the Ferry or Passage House: And the said George in fact says, that he, relying on the said promise and undertaking of them the said J. T. and W. and in hopes of the faithful performance of the same, afterwards, to wit, on the same day and year aforesaid, at Usk aforesaid, in the said county of Monmouth, did deliver, or cause to be delivered, in or on board the said boat or vessel of them the said J. T. and W. the said three several baskets of fish, to be by them the said J. T. and W. safely and securely taken care of, kept, carried, conveyed, and delivered, in manner and form aforesaid: Nevertheless the said J. T. and W. not regarding their said promise and undertaking so by them in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this behalf, have not, nor hath any or either of them, yet safely and securely taken care of, carried, or conveyed the said several baskets of fish, or any or either of them, or any part thereof, in the said boat or vessel of them the said J. T. and W. across the said river Severn, at the said place or ferry called the Old Passage or Ferry, otherwise Beachly Passage or Ferry, to the said other place or ferry on the opposite coast called Aust Ferry or Passage, both in the said county of Gloucester, and there, to wit, at Aust Ferry or Passage aforesaid,

aforesaid, delivered the said several baskets of fish, or any or either of them, or any part thereof, at the said house or place called the Ferry or Passage House, or to the said George, or to any other person on his behalf; but on the contrary thereof have, and each and every of them hath, wholly omitted and neglected so to do; and by and through the negligence, carelessness, misconduct, and default of them the said J. T. and W. and their servants, and for want of their due, proper, and safe keeping and taking care of the said several baskets of fish, and each and every of them, in the carriage and conveyance of the same across the said river Severn, at the said place or ferry called the Old Passage or Ferry otherwise Beachly Passage or Ferry, to the said other place or ferry on the opposite coast called Aust Ferry or Passage, both in the said county of Gloucester, and there, to wit, at Aust Ferry or Passage aforesaid, to the said house or place called the Ferry or Passage House, the same several baskets of fish, and each and every of them, and every part thereof, became and were wholly lost to him the said George, to wit, at Usk aforesaid, in the said county of Monmouth. (2d Count, in consideration that plaintiff had; money paid, &c.; ditto had and received; common breach to the two last Counts.)

Drawn by MR. GRAM.

See Negligence, Index.

LONDON, *&c.* Edward Johnson complains of Joseph Miller, being in the custody, &c. of a plea of trespass on the case, &c.: for that whereas, at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, and for a long time afterwards, he the said defendant was the owner of a certain ship called the Kingston, lying at the port of London, and then and there waiting for freight, and bound on a voyage from the said port of London to Newfoundland in parts beyond the seas, to wit, at London aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap; and the said defendant so being owner of the said ship or vessel, whilst he was such owner as aforesaid, to wit, on the fourth day of May in the year 1781 aforesaid, at London, &c. aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would ship and put on board his said ship called the Kingston as aforesaid, certain goods, to wit, twenty ton weight of biscuit and five hundred bags of him the said plaintiff, of a large value, to wit, of the value of five hundred pounds, to be carried in the said vessel from the said port of London to Newfoundland aforesaid, and there to be delivered to the order of him the said plaintiff, for a certain freight and reward to be therefore paid by him the said plaintiff to the said defendant for the freight of the same, the said defendant undertook, and then and there faithfully promised him the said plaintiff, that, it being time of war, for the security of the said goods so to be shipped and put on board the said ship by him the said plaintiff, the said ship should sail with convoy: And the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of the said defendant

Declaration in special assumpsit against the owner of a ship for failure without a convoy, whereby plaintiff's goods on board the ship were taken.

defendant so made by him in this behalf, afterwards, to wit, on the day and year aforesaid, at London, &c. aforesaid, shipped and put on board the said ship called the Kingston as aforesaid, the said goods of him the said plaintiff, to be carried in the said ship from the port of London aforesaid to Newfoundland aforesaid, and there to be delivered unto the order of the said plaintiff, and then and there paid unto the said defendant a large sum of money, to wit, one hundred pounds, for the freight thereof; (in the 2d Count, instead of what is in *Italic*, say, “and although he was then and there ready to pay to the said defendant, upon request, the said freight “for the said goods;”) and although the said defendant had and received the said goods to carry as aforesaid: Yet the said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure him the said plaintiff in this behalf, he the said defendant did not perform his promise aforesaid (although often requested); but on the contrary thereof, afterwards, to wit, on the twentieth day of May in the year aforesaid, whilst the said goods of the said plaintiff were on board the said ship for the purpose aforesaid, caused and permitted the said ship to sail and proceed upon her voyage aforesaid without convoy, whereby the said ship became more liable to be taken by the enemies of our lord the king, with whom he was then at war; and the said ship was, whilst proceeding on her voyage aforesaid without convoy, to wit, on the first day of July in the year aforesaid, by reason of her sailing and proceeding without convoy, attacked, conquered, and taken by *certain persons, that is to say, by certain then enemies of our lord the now king, “to the said plaintiff “unknown,” to wit, by certain subjects of the French king,* as a prize, with the said goods of the said plaintiff then on board; and the said goods were also then and there taken as a prize, and thereby wholly lost unto the said plaintiff, to wit, at London, &c. aforesaid. (Add a 2d Count, omitting what is in *Italic*, and insert what is within inverted commas; Counts for goods sold and delivered, &c.; money laid out, and account stated; with common conclusion to three last Counts.)

J. MORGAN,

Trinity Term, 21. Geo. III.

Negligence against a master and owner of a vessel in losing part of goods belonging to plaintiff delivered to defendant's care, &c.

FOR that whereas heretofore, to wit, on, &c. in consideration that said plaintiff, at the special, &c. of said defendant, had shipped and put on board a certain vessel called, &c. of the said defendant, then lying at a certain quay called, &c. in the port of B. in the county of S. certain goods and merchandizes, to wit, three casks containing a certain large quantity, to wit, three tons weight of iron of him said plaintiff, of a large value, to wit, &c. to be safely and securely carried, transported, and carried by water in the said vessel from the aforesaid quay in the port of B. to B. in the county of W. upon freight to be therefore paid by him said plaintiff to said defendant, he the said defendant undertook, &c.

&c. safely, &c. to carry, &c. by water in his aforesaid vessel the said goods of him said plaintiff, from the aforesaid quay at B. aforesaid to B. aforesaid in the said county of, &c. and there, to wit, at B. aforesaid, safely, &c. to deliver the same to the use of the said plaintiff: And the said plaintiff in fact saith, that although the said defendant did, after his said receipt of the said goods, &c. of the said plaintiff for the purpose aforesaid, and before the exhibiting this bill, transport, carry, convey, and deliver a part of the aforesaid goods, &c. of said plaintiff, to wit, one of the aforesaid casks, containing one ton weight of the aforesaid iron, according to the tenor and effect of the aforesaid promise and undertaking of him the said defendant: Yet the said plaintiff in fact further saith, that the said defendant, not regarding, &c. but contriving, &c. to deceive the said plaintiff in this behalf, hath not as yet safely, &c. carried, &c. the residue of the said goods, &c. of him said plaintiff from the said quay called, &c. at B. aforesaid to B. aforesaid, and there safely, &c. delivered the same to the use of the said plaintiff according to the tenor and effect of the aforesaid promise and undertaking of said defendant, (although a reasonable time for that purpose hath long since elapsed, and although so to do, &c.; but on the contrary thereof, be the said defendant, before the exhibiting, &c. to wit, on, &c. at, &c. so negligently and carelessly managed and conducted himself in the premises, and took so little and such bad care of the said residue of the said goods, &c. of the said plaintiff, that the said residue of the said goods, &c. being of a large value, to wit, of, &c. became and were, and still are wholly left to the said plaintiff, to wit, at, &c. (Second Count same as the last, only omitting what is in Italic, and inserting in lieu thereof what is in the margin; third and fourth Counts like the first and second; fifth, money had and received; sixth, money laid out; common conclusion to those Counts.)

he to perform his said last-mentioned promise and undertaking in such respect hath hitherto wholly refused and still refuses so to do, and the residue of the said last-mentioned goods, being of a large value, &c. are still wholly undelivered to him the said plaintiff.

CITY of BRISTOL and County of same City, ss. John Griffith complains of Abraham Jones being in the custody, &c. in a plea of trespass on the case, &c.: for that whereas heretofore, to wit, on the fourth day of May A. D. 1782, at and in the city of Bristol, in the county of the same city, in consideration that said plaintiff, at the special instance and request of said defendant, had then and there delivered to said defendant certain goods and merchandizes, to wit, a certain large quantity of sugar of him the said plaintiff, of a large value, to wit, of the value of twenty pounds of lawful money of Great Britain, to be safely and securely carried, transported, and conveyed from the port of Bristol aforesaid to Newport in the county of Monmouth, in a certain ship or vessel of said defendant on freight, and there, to wit, at Newport aforesaid, to be safely and securely delivered by the said defendant for the purpose of being carried and conveyed from thence for the plaintiff with the carrier to whom, &c. whereby plaintiff lost his remedy against them at B. Ante, 234.—Vide 1. Com. Dig. tit. Act. on on the Case for Negligence (C). 1. Will, 281. Bull. N. P. 70. Stat. 7. Geo. 2. c. 15. 1. D. and E. 18.

Declaration against the owner of a vessel for negligence in carrying goods of plaintiff on freight, whereby some were spoiled, and others lost. 5th and 6th Counts on promises to carry goods to N. and there delivered them to some carrier to convey same to E. for not acquainting him, for not deceiving him.

said

2d Count.

said plaintiff to Brecon in the county of Brecon, he the said defendant undertook, and then and there faithfully promised said plaintiff to safely and securely carry, transport, and convey the said goods and merchandizes of said plaintiff in manner aforesaid, from the said port of Bristol to Newport aforesaid in said county of M. and there, to wit, at Newport aforesaid, to safely and securely deliver the same to be carried and conveyed from thence for said plaintiff to Brecon aforesaid. And whereas also heretofore, to wit, on the said first day of May in the year 1782 aforesaid, at the city of Bristol aforesaid in the county of the same city, in consideration that the said plaintiff, at the like special instance and request of said defendant, had then and there delivered to said defendant certain other goods and merchandizes, to wit, a certain large quantity of deal boards of him the said plaintiff, of a large value; to wit, of the value of twenty pounds of like lawful money, to be by him the said defendant safely and securely carried and conveyed from Bristol aforesaid to Newport aforesaid, in said county of M. and there, to wit, at Newport aforesaid, to be safely and securely delivered to the use of him said plaintiff for certain *reasonable reward* to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, and then and there faithfully promised said plaintiff, *would safely and securely carry and convey the said last-mentioned goods and merchandizes of said plaintiff from Bristol aforesaid to Newport aforesaid in said county of M.* and there, to wit, at Newport aforesaid, safely and securely deliver the same to the use of the said plaintiff: And the said plaintiff in fact faith, that although the said defendant, on the day and year aforesaid, at the city of Bristol aforesaid in the county of the same city, had and received the said *several* "last-mentioned" goods and merchandizes of said plaintiff *in the said several promises and undertakings mentioned*, for the *several and respective* purposes aforesaid: Yet that the said plaintiff "defendant" not regarding his said several promises and undertakings so by him in manner and form aforesaid made, but contriving, &c: to deceive and defraud the said plaintiff in this behalf +, hath not as yet safely and securely carried and conveyed the said goods and merchandizes of the said plaintiff in those promises and undertakings mentioned, or any part thereof, from Bristol aforesaid to Newport aforesaid, and there safely and securely delivered the same to the use of the said plaintiff, although a reasonable time for that purpose hath long since elapsed, and although so to do he the said defendant hath been often requested by the said plaintiff, to wit, at the city of Bristol aforesaid in the county of the same city, but he the said defendant so to do hath hitherto wholly refused and neglected, contrary to the tenor and effect of his said several promises and undertakings in that respect made as aforesaid, and the said goods and merchandizes are still wholly undelivered to or to the use of him the said plaintiff, to wit, at the city of Bristol aforesaid in the county of the same city. And whereas also heretofore, to wit, on the day and year aforesaid, at, &c. aforesaid, in consideration that said plaintiff,

Third Count.

tiff, &c. (Another Count like the second for the sugars, till you come to the promise in *Italic*, which you will omit, and insert the following: [*would take due and proper care of the said last-mentioned goods and merchandizes of the said plaintiff, and would safely and securely carry and convey the same from Bristol aforesaid to Newport aforesaid in the said county of Monmouth*], then proceed as in second Count to this mark +, omitting what is in *Italic*; from whence you will proceed as follows :) did not take due and proper care of the said last-mentioned goods and merchandizes of the said plaintiff; but on the contrary thereof, whilst the said defendant had the said last-mentioned goods and merchandizes for the purpose aforesaid, to wit, on the day and year last aforesaid, and on divers other days and times between that day and the exhibiting of this bill, to wit, at the city of Bristol in the county of the same city, he the said defendant took so little and such bad care of the said last-mentioned goods and merchandizes of said plaintiff, that the said last-mentioned goods and merchandizes, being of the value aforesaid, were, by and through the mere negligence, inattention, and want of care of the said defendant, *greatly wetted, damaged, and spoiled, and rendered of no use or value*, to wit, at the city of Bristol in the county of the same city. (Add a fourth Count same as the third, for the deal boards, only omitting what is in *Italic*, and inserting instead thereof the following: “wholly lost to the said plaintiff.”) And whereas also here-^{5th Count.} tofore, to wit, on the said first day of May in the year aforesaid, at Bristol aforesaid in the county of the same city, in consideration that said plaintiff, at the like special instance and request of said defendant, had then and there delivered to said defendant certain other goods and merchandizes, to wit, a certain other large quantity of deal boards of him the said plaintiff, of a large value, to wit, &c. to be safely and securely carried, transported, and conveyed “by him said defendant” from the port of Bristol aforesaid to the port of Newport aforesaid in said county of M. *in a certain other ship or vessel of the said defendant* on freight, and there, to wit, at Newport aforesaid, to be safely and securely delivered to some common carrier of goods from that place to Brecon aforesaid in said county of Brecon, for the purpose of their being carried and conveyed from thence to Brecon aforesaid, “and there delivered to the use of said plaintiff,” *for the said plaintiff*, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would safely and securely carry, transport, and convey the said last-mentioned goods and merchandizes of the said John, *in manner* aforesaid, from the said port of Bristol to Newport aforesaid in said county of M. and there, to wit, at Newport aforesaid, safely and securely delivered the same to such common carrier as aforesaid, for the purpose aforesaid +, and apprise the said plaintiff of and acquaint him with the carrier to whom the said last-mentioned goods and merchandizes should be so delivered by him the said defendant: And the said plaintiff in fact saith, that although the said defendant on the day

day and year aforesaid, at the city of Bristol aforesaid in the county of the same city, had and received the said last-mentioned goods and merchandizes of the said plaintiff for the purpose aforesaid; and although the said defendant did afterwards carry, transport, and convey the said last-mentioned goods and merchandizes from the said port of Bristol to Newport aforesaid, and there deliver the same to such common carrier as aforesaid, for the purpose aforesaid; and although the said carrier, to whom said defendant delivered the said last-mentioned goods and merchandizes of the said plaintiff, did not, within a reasonable time after the delivery thereof to him for the purpose aforesaid, deliver, nor hath at any time since hitherto delivered the said goods and merchandizes, or any part thereof, to or for the use of said plaintiff: Yet the said defendant, well knowing the premises last aforesaid, but wholly disregarding his said last-mentioned promise and undertaking, and contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet in any manner whatsoever apprized him the said plaintiff of, or acquainted him with the carrier to whom the said last-mentioned goods and merchandizes were so delivered by the said defendant as aforesaid, although a reasonable time for that purpose has long since elapsed; and although to perform his said promise and undertaking in that respect he the said defendant hath been frequently requested by the said plaintiff, to wit, at the city of Bristol aforesaid, in the county of the same city, but he so to do hath hitherto wholly refused and neglected, and still refuses so to do, whereby he the said plaintiff hath been and still is hindered and prevented from calling on the said carrier to whom the said last-mentioned goods, &c. were so delivered as aforesaid, for and on account of the said last-mentioned goods and merchandizes and of the non-delivery thereof to him the said plaintiff, to wit, at the city of Bristol aforesaid in the county of the same city. And whereas also, &c. [go on as in the fifth Count, till you come to this mark +, omitting what is in *Italic*, and inserting what is between inverted commas, then proceed as follows:] and that he the said defendant would take due and proper care of the said last-mentioned goods and merchandizes of the said plaintiff, as well in the carriage and conveyance of the same from the port of Bristol aforesaid to Newport aforesaid, as in the delivery of the same at Newport aforesaid to such common carrier as aforesaid for the purpose aforesaid: And the said plaintiff in fact saith, that although said defendant on the day and year last aforesaid, at the city of Bristol aforesaid in the county of the same city, had and received the said last-mentioned goods and merchandizes of the said plaintiff for the purpose aforesaid; and although he the said defendant did afterwards carry, transport, and convey said last-mentioned goods and merchandizes from the said port of Bristol to Newport aforesaid, and did there, to wit, at Newport aforesaid, deliver the same to such common carrier as aforesaid for the purpose aforesaid: Yet the said defendant, not regarding his said last-mentioned promise, &c. so by him in manner and

6th Count.

form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not take due and proper care in the delivery of the same at Newport aforesaid, to such common carrier as aforesaid; but on the contrary, delivered said last-mentioned goods, &c. of said plaintiff to a certain common carrier of such goods, &c. from Newport aforesaid to Brecon aforesaid, who was then and there and still is unknown either to him said defendant or to the said plaintiff, to wit, at the city of Bristol aforesaid in the county of the same city, contrary to the tenor and effect of the said last-mentioned promise and undertaking of said defendant, whereby and by means whereof he said plaintiff hath wholly lost and been deprived of his remedy against the said carrier to whom said last-mentioned goods and merchandizes were so delivered by the said defendant as aforesaid, and who hath hitherto neglected to deliver the same, or any part thereof, to or to the use of him the said plaintiff, although a reasonable time for that purpose hath long since elapsed, to wit, at the city of Bristol aforesaid in the county of the same city. (Money had and received; account stated; and common conclusion to those Counts.)

V. LAWES.

B. R. Trinity Term, 21. Geo. III.

TONGUE } FOR that whereas heretofore, to wit, on, Declaration for
against } &c. in consideration that said plaintiff, at the negligence a-
BEALE. } special instance and request of said defendant, gainst a master
had shipped and put on board a certain vessel called Trow and owner of a
of said defendant, then lying at a certain quay called A. B. vessel, in losing
in the port of Bristol in the county of Somerset, certain goods part of goods
and merchandizes, to wit, three casks containing a certain large belonging to
quantity, to wit, three tons weight of iron of him said plaintiff, plaintiff deliver-
of a large value, to wit, &c. to be safely and securely carried, ed to defend-
transported, and conveyed by water in the said vessel from the ant's case.
aforesaid quay in the port of Bristol to Bewdley in said county of
Worcester upon freight to be therefore paid him said defendant
by said plaintiff, he the said defendant undertook, and then and
there faithfully promised said plaintiff safely and securely to carry,
transport, and convey by water in his aforesaid vessel the said
goods, &c. of him said plaintiff from the said quay at Bristol aforesaid
to Bewdley aforesaid in the said county of, &c. and there, to
wit, at Bewdley aforesaid, safely and securely to deliver the same
to the use of the said plaintiff: And said plaintiff in fact saith, that
although the said defendant did after his aforesaid receipt of the said
goods and merchandizes of said plaintiff for the purpose aforesaid,
and before the exhibiting of this bill, carry, transport, convey,
and deliver a part of the aforesaid goods, &c. of said plaintiff, to
wit, one of the aforesaid casks, containing one ton weight of the
aforesaid iron, according to the tenor and effect of the aforesaid
promise and undertaking of him said defendant: Yet said plaintiff
in fact further saith, that said defendant, not regarding his said
promise

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promise

promise and undertaking so by him in manner and form in this behalf made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet safely and securely carried, transported, or conveyed the residue of the said goods, &c. of him said plaintiff from said quay called, &c. at Bristol aforesaid to Bewdley aforesaid, and there safely and securely delivered the same to the use of the said plaintiff according to the tenor and effect of the aforesaid promise and undertaking of said defendant, although a reasonable time for that purpose has long since elapsed, and although so to do the said defendant hath been oftentimes requested by the said plaintiff; *but on the contrary thereof, he said defendant, before the exhibiting, &c. to wit, on, &c. at, &c. aforesaid, so negligently and carelessly managed and conducted himself in the premises, and took so little and such bad care of the said residue of the said goods, &c. of said plaintiff, that the said residue of said goods, being of a large value, to wit, of, &c. became and were and still are wholly lost to said plaintiff,* [he to perform his last-mentioned promise and undertaking in such respect hath hitherto wholly refused, and still refuses so to do, and the residue of the said last-mentioned goods, &c. being of a large value, to wit, &c. are still wholly undelivered to him said plaintiff]. (Add a second Count like the first, only omitting what is in *Italic*, and inserting what is between brackets. Third and fourth Counts like the first and second, only stating the consideration to be the delivery of the goods, &c. to defendant, to be carried from Bristol to Bewdley, &c. without saying any thing as to the mode of conveyance. Money laid out; money had and received; and common conclusion to these Counts.)

V. LAWES.

Declaration for negligently carrying jars of oil from Leghorn to London, stowing them so as to damage the packing, which occasioned their opening and loss of oil.

LONDON, *ss.* Elias Hampton, late of, &c. mariner, was attached to answer unto Richard Clay, of a plea of trespass on the case, &c. And thereupon the said plaintiff, by Benjamin Cooke, his attorney, complains, That whereas the said defendant before and at the time of the making of the promise and undertaking of said defendant hereafter mentioned, was master and commander of a certain ship or vessel called the Anna Maria, then riding at anchor at and in the port of Leghorn, in Italy, and then bound on a voyage from Leghorn aforesaid to the port of London; and said defendant so being such master and commander of the said ship as aforesaid, on the thirtieth January A. D. 1736, at London aforesaid, in the parish of, &c.; in consideration that said plaintiff, at the special instance and request of the said defendant, had caused to be delivered to said defendant divers, to wit, fifty jars of oil of him said plaintiff of the value of three hundred and fifty pounds, in good order and well conditioned, to be by him said defendant carried, transported, and conveyed in said ship or vessel of him said defendant from the port of Leghorn aforesaid to the port of London aforesaid for freight; and there, to wit, at the port of London aforesaid

aforsaid, to be safely and securely delivered to said plaintiff in such like good order and well conditioned (the damages and perils of the sea only excepted), he said defendant undertook, and then and there, to wit, on same day and year aforsaid, at London, &c. aforsaid, faithfully promised said plaintiff safely and securely to keep and carry and convey the said fifty jars of oil from the port of Leghorn aforsaid to the port of London aforsaid, and there, to wit, at the port of London aforsaid, to deliver the same to the said plaintiff in like good order and well conditioned (the perils and dangers of the seas only excepted): And said plaintiff avers, that although said defendant afterwards, to wit, on the same day and year aforsaid, had and received said fifty jars of oil to carry and convey as aforsaid; and although the same at the time of the said delivery and receipt thereof were in good order and condition and well packed; and although the said defendant afterwards, to wit, on the same day and year aforsaid, departed and set sail in and with the said ship on his said voyage out and from the port of Leghorn aforsaid, towards and for the port of London aforsaid, and afterwards, to wit, on the twenty-fifth of March in the year aforsaid, arrived in and with the said ship in the said voyage in safety at and in the port of London aforsaid: Yet said defendant, not regarding his promise and undertaking so by him made in this behalf as aforsaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not safely and securely keep, carry, and convey the said fifty jars of oil, or any of them, from the port of Leghorn aforsaid to the port of London aforsaid, and there, to wit, at the port of London aforsaid, safely and securely deliver the same to the said plaintiff, in such like good order and well conditioned (although the perils and dangers of the seas did not prevent him from so doing, and although to deliver the same to the said plaintiff in such like good order and well conditioned at the port of London aforsaid, he the said defendant was requested by the said plaintiff afterwards, to wit, on same day and year last aforsaid, and often afterwards, at London aforsaid); but he the said defendant safely and securely to deliver the same fifty jars of oil or any part thereof to the said defendant, at the port of London aforsaid, or elsewhere, in such like good order and well conditioned, hath from thence hitherto wholly refused; and on the contrary thereof, the said defendant so negligently and carelessly behaved himself in this, and so negligently stowed and kept the said fifty jars of oil in the said ship, that the cords, ropes, covers, tops, corks and package of the said fifty jars of oil, and each and every of them, in the carriage thereof were broke, cut to pieces, tore off, spoiled, rotted, rubbed off and wasted, and the said jars of oil thereby became uncovered, and the oil therein contained thereby greatly hurt, damaged, spoiled, and rendered unfit for sale, to wit, at London, &c. aforsaid, to the damage of the said plaintiff of forty pounds; and therefore he brings suit, &c.

Declaration against a lighterman for negligence in suffering goods to be stolen that were given him to ship on board a ship at anchor in the river Thames.

LONDON, *J.* Thomas Bigge, late of, &c. lighterman, was attached to answer unto Gabriel Ludlow, in a plea of trespass on the case, &c. and thereupon, &c. : That whereas on the eighth of March A. D. 1748, at L. &c. in consideration that said plaintiff, at the special instance and request of said defendant, had delivered to said defendant divers goods and merchandizes, to wit, &c. of him the said plaintiff to the value of forty-two pounds, to be by him said defendant safely and securly carried and transported by water in a boat or lighter of said defendant, from a certain quay called, &c. in L. aforesaid, unto a certain ship or vessel called the B. then floating or lying at anchor in the river of Thames, and to be there shipped and put on board the said ship for a reasonable reward or sum of money, to be therefore paid by him said plaintiff to said defendant, he the said defendant undertook, and then and there, to wit, at L. &c. aforesaid, faithfully promised said plaintiff, safely and securely to carry and transport the said goods and merchandizes from the said quay unto the said ship, and there safely and securely to load and put the same on board the said ship; and although the said defendant had received same goods and merchandizes to carry, transport and ship as aforesaid, to wit, at L. &c. aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. in this behalf hath not shipped or put the said goods and merchandizes, or any part thereof, on board the said ship, nor has he taken care safely and securely to carry and transport the same according to his promise aforesaid; but on the contrary thereof, he said defendant, on the said eighth of March in the year aforesaid, at L. &c. aforesaid, so negligently and carelessly behaved, had and governed himself in the carrying and transporting of the said goods and merchandizes to the said ship, that the said goods and merchandizes, after the same was received by said defendant for the purpose aforesaid, and before the same were shipped or put on board the said ship, for want of due care and watching of said defendant and his servants in this behalf, and by reason of the negligence of said defendant and his servants in this behalf, were stolen, taken and lost out of the said boat or lighter of said defendant, and never were shipped on board the said ship, or delivered to said plaintiff, or to his use, to the said plaintiff his damage of fifty pounds; and therefore, &c.

Drawn by Mr. WARREN.

Non assumpsit was pleaded to the above declaration.

Declaration against a captain of a ship at suit of the consignee; goods sent from London to Jamaica on a bill of lading, freight, primage, and average paid; goods not delivered.

MARK HARDYMAN against John Dod Bonnell, K. B. Ca-larny, for plaintiff. 1st Count, That whereas, on twenty fifth January 1755, at L. &c. in consideration that plaintiff, at the special instance and request of defendant, had caused to be delivered to defendant divers goods, wares and merchandizes of him said plaintiff of the value of pounds, to be transported, carried

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ried and conveyed by defendant in a certain ship or vessel of him said defendant, from the port of London to Montego bay, in Jamaica, in the West-Indies, and there, to wit, at the port of M. B. afore said, in J. afore said, to be delivered to the said plaintiff (the dangers and perils of the seas only excepted) for a certain price or reward, therefore caused to be paid by said plaintiff to said defendant, he the said defendant undertook, &c. safely and securely to transport, carry and convey said goods, wares and merchandizes from the port of L. afore said, to M. B. afore said, in J. afore said, and there, to wit, at the port of M. B. afore said, safely and securely to deliver the same to the said plaintiff (the perils and dangers of the seas only excepted); and although said defendant on same day and year afore said, at L. &c. afore said, had and received said goods, wares and merchandizes to carry, transport and convey as afore said: Yet defendant not regarding, &c. but contriving, &c. to deceive, &c. did not safely and securely keep and carry said goods, wares and merchandizes from the port of London afore said to M. B. in Jamaica afore said, and there, to wit, at the port of M. B. afore said, deliver the same safely and securely to said plaintiff (although the perils and dangers of the seas did not prevent him from so doing, and although to deliver the same to the said plaintiff he the said defendant was requested by him said plaintiff afterwards, to wit, on the first of June in the year afore said, and often afterwards, to wit, at London, &c. afore said); but he to deliver the same to the said plaintiff hath hitherto wholly refused, and still refuses. 2d Count. And whereas on said twenty-fifth January A. D. 1755, afore said, at L. &c. afore said, the said plaintiff, at the instance of said defendant, caused to be shipped in good order and well conditioned by one George Brown, in and upon the good ship called the Ellis, whereof was master, under God, for that then present voyage the said defendant, and then riding at anchor in the river Thames, in the said port of London, and by God's grace bound for Montego Bay, in Jamaica afore said, divers other goods, wares and merchandizes, *i. e.* one puncheon, &c. of him said plaintiff, of the value of other pounds, and which were to be delivered in like good order and well-conditioned at the port of M. B. afore said, in J. afore said (the dangers of the seas only excepted), unto the said plaintiff or his assigns, and at the like request of said defendant had caused to be paid to said defendant freight for said goods, &c. with primage and average accustomed; he the said defendant, in consideration thereof, afterwards, to wit, on same day and year afore said, at London afore said, undertook, and then and there faithfully promised said plaintiff, safely and securely to deliver the last-mentioned goods and merchandizes in like good order and well conditioned, at the afore said port of M. B. in J. afore said (the perils and dangers of the seas only excepted), unto said plaintiff or to his assigns: And the said plaintiff avers, that the said ship called the Ellis afterwards, to wit, on same day and year last afore said, set sail and departed on her said voyage from the port of L. &c. afore said towards and for M. B. afore said, and afterwards, to wit, on the first of

Count upon the
bill of lading.

June in the year aforesaid, arrived in her said voyage under the care and direction of said defendant as master thereof, to wit, at M. B. aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. in this behalf, although said plaintiff did not make any assignment of the said goods, &c. last-mentioned, or any part thereof, to any person or persons whatsoever, and although the dangers of the seas did not prevent him the said defendant from so doing, did not deliver the said goods, &c. last-mentioned, or any part thereof, to said plaintiff, in such like good order and well conditioned, or in any other order or condition, at the port of M. B. in J. aforesaid, or elsewhere (although to deliver the same to the said plaintiff at the aforesaid port of M. B. in J. aforesaid, he the said defendant was requested by said plaintiff afterwards, to wit, on same first day of June in the year aforesaid, and often afterwards, to wit, at London, &c. aforesaid); but he to deliver the same, or any part thereof, to the said plaintiff hath hitherto wholly refused, and still refuses, to the said plaintiff his damage of pounds; and therefore he brings his suit, &c. Pledges, &c.

Drawn by MR. WARREN,

B. R. Michaelmas Term, 22. Geo. 3.

Declaration in
special *assumpsit*
against the own-
er of a ship for
sailing without
a convoy, where-
by plaintiff's
goods on board
the ship were
taken.

LONDON, *ss.* Edward Johnson complains of Joseph Miller being in the custody, &c. of a plea of trespass on the case, &c.: for that whereas at the time of the making of the promises and undertaking of said defendant hereafter next-mentioned, and for a long time afterwards, he said defendant was the owner of a certain ship called the Kingston, lying at the port of London, and then and there waiting for freight and bound on a voyage from the said port of London to Newfoundland, in parts beyond the seas, to wit, at London aforesaid, in the parish of St. Mary le-Bow, in the ward of Cheap; and said defendant so being owner of the said ship or vessel, whilst he was such owner as aforesaid, to wit, on the fourth day of May in the year 1781, aforesaid, at London, &c. aforesaid, in consideration that said plaintiff, at the special instance and request of said defendant, would ship and put on board his said ship called the Kingston as aforesaid, certain goods, to wit, twenty ton weight of biscuit, and five hundred bags, of him said plaintiff, of a large value, to wit, of the value of five hundred pounds, to be carried in the said vessel from the said port of London, to Newfoundland aforesaid, and there to be delivered to the order of him said plaintiff, for certain freight or reward to be therefore paid by him said plaintiff to said defendant for the freight of the same, the said defendant undertook, and then and there faithfully promised him said plaintiff, that, it being time of war, for the security of said goods so to be shipped and put on board said ship by him said plaintiff, the said ship should sail with convoy: And said plaintiff in fact saith, that he, confiding in said promises and undertaking of said defendant so made by him in this behalf, afterwards, to wit, on the day and year aforesaid, at London, &c. aforesaid, shipped

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and put on board said ship called the Kingston as aforesaid said goods of him said plaintiff, to be carried in said ship from the port of London aforesaid to Newfoundland aforesaid, and there to be delivered unto the order of said plaintiff, *and then and there paid unto said defendant a large sum of money, to wit, one hundred pounds, for the freight thereof* (in the 2d Count, instead of what is in Italic, say, “and although he was then and there ready to pay to said defendant said freight for said goods”); and although said defendant had and received said goods to carry as aforesaid: Yet said defendant, not regarding his said promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure him said plaintiff in this behalf, he said defendant did not perform his promise aforesaid (although often requested); but on the contrary thereof, afterwards, to wit, on the twentieth day of May in the year aforesaid, whilst the said goods of said plaintiff were on board said ship for the purpose aforesaid, caused and permitted said ship to sail and proceed upon her voyage aforesaid without convoy, whereby said ship became more liable to be taken by the enemies of our lord the king, with whom he was then at war; and said ship was, whilst proceeding in her voyage aforesaid without convoy, to wit, on the first day of July in the year aforesaid, by reason of her sailing and proceeding without convoy, attacked, conquered, and taken, by certain persons, *that is to say, by certain then enemies of our lord the now king, TO SAID PLAINTIFF UNKNOWN, to wit, by certain subjects of the French king,* as a prize, with said goods of said plaintiff then on board, and said goods were also then and there taken as prize, and thereby wholly lost unto said plaintiff; to wit, at London, &c. aforesaid. (Add a 2d Count, making the alterations in capitals, omitting what is in Italic, and inserting what is in capitals. Counts for goods sold and delivered, &c.; money laid out; and account stated; with common conclusion to three last Counts.) J. MORGAN.

AGAINST BAILEES FOR VARIOUS PURPOSES.

LONDON, to wit. Whereas W. C. A. C. and J. C. at the several and respective times herein after mentioned, were owners of a certain ship called the Fly Cutter, under the command of A. B. esquire, at, &c.: And whereas also, at the time of the making of the promise and undertaking herein after mentioned, the cargo of goods and merchandizes on board a certain brigantine called the Hope had been taken as a prize by the said cutter under the command of the said A. B. and legally had been condemned as a prize to the said cutter by his majesty's court of
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Declaration a-
gainst prize a-
gents, for not
disposing of a
prize to the best
advantage.

vice-admiralty at Tobago, whereby the said plaintiff, as master on board the said ship called the Fly, became intitled to seven shares of and in the said prize, to wit, at, &c. ; and thereupon afterwards, to wit, on, &c. at the Island of Tobago aforesaid, to wit, at London aforesaid, &c. in consideration that the said plaintiff had, together with the owners of the said ship called the Fly Cutter, at the special instance and request of the said defendants, employed the said defendants as their agents to sell and dispose of the said cargo of goods and merchandizes for a certain hire, commission, or reward, to be therefore paid to the said defendants by the said plaintiffs, they the said defendants undertook, and then and there faithfully promised the said plaintiffs, to sell and dispose of the same cargo of goods and merchandizes at and for the best prices and most advantageous terms for the sellers thereof that they the said defendants could get and procure for the same ; and although the said defendants afterwards, to wit, on, &c. at the Island of Tobago aforesaid, sold and disposed of the said cargo of goods and merchandizes : Yet not regarding, &c. but contriving, &c. did not sell and dispose of the said cargo of the said goods and merchandizes at and for the best prices and upon the most advantageous terms for the sellers thereof that they the said defendants could get and procure for the same, according to their said promise and undertaking, but omitted and neglected so to do, and sold and disposed of the said cargo at much less, to wit, at four thousand pounds, than they might and could have got and procured for the same, whereby the said plaintiff hath sustained a great loss, to wit, five hundred and twenty pounds on his share of the said prize, to wit, at, &c. And whereas also the said defendants afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of defendants, had employed the said defendants as his agents to sell and dispose of his shares of and in a cargo of goods and merchandizes on board a certain other ship or vessel called, &c. for certain reward, hire, or commission, to be therefore paid to the said defendants, they the said defendants undertook, &c. (as before. Add the common Counts.)

G. WOOD.

Declaration against a pawnbroker for not suffering plaintiff to redeem goods which he had pledged with defendant, but losing the same.

MIDDLESEX, to wit. George Roylston was attached to answer John Boyle, &c. : for that whereas at the time of the making of the two several promises and undertakings hereafter next mentioned the said George was a pawnbroker, and the business of a pawnbroker then followed and carried on, to wit, at, &c. ; and the said George so being a pawnbroker, and exercising the said business as aforesaid, heretofore, to wit, on, &c. in consideration that the said John, at the special instance and request of the said George, had *before then and there* pawned and delivered to him the said George as and by way of pledges to him the said George, for certain (1) sums of money before then advanced by him to the said John thereon, amounting in the whole to a large sum of money,

(1) "other".

to wit, the sum of, &c. certain goods and chattels, to wit, one suit, &c. (2) of the said John of a large value, to wit, of the value of fifty pounds, of (3) lawful money of Great Britain, he the said George undertook, &c. the said John to take due and proper care of the said (4) goods and chattels, and of each and every of them, until (5) the same should be redeemed by him the said John: And the said John in fact (6) says, that although he the said George had and received the said several (7) goods and chattels of him the said John on the occasion and for the purpose (8) aforesaid, to wit, at, &c.: Yet the said George, not regarding his said promise and undertaking so by him made as (9) aforesaid, but, &c. the said John in this behalf, did not take due and proper care of the said (10) goods and chattels of the said John; but on the contrary thereof, he the said George afterwards, and after the (11) pawning and delivery (12) of the said goods and chattels to him the said George as aforesaid, to wit, on, &c. he the said George took so little and such bad care of, and so negligently kept the said (13) goods and chattels, that the said (14) goods and chattels (15) whilst they were so in the possession of the said George for the purpose aforesaid, were burnt, damaged, destroyed, and consumed by fire, and wholly and entirely lost (16) unto him the said (17) John, to wit, at, &c. And whereas the said George, so being and carrying on the business of a pawnbroker as aforesaid heretofore, and whilst he was and carried on such business, to wit, on, &c. in consideration that the said John, at the special instance and request of the said George, &c. &c. &c. (Go on with the 2d Count same as the first, leaving out what is in Italic, and inserting what is in the margin.) And whereas the said George, so being and carrying on the business of a pawnbroker as aforesaid heretofore, and whilst he was and so carried on such business, to wit, on, &c. in consideration that he the said John, at the like special, &c. of the said George, had before then and there pawned and delivered to the said George as and by way of pledges, &c. (as in 1st Count), certain other goods and chattels, to wit, one other suit, &c. there faithfully promised the said John to take due and proper care of the said last-mentioned goods and chattels until redemption thereof by the said John, and to permit the said John to redeem the same, or any part thereof, upon request; and on such redemption of the said last-mentioned goods and chattels, redeliver the same or such part thereof as should be redeemed unto him the said John: And the said John in fact further says, that he the said George had and received the said last-mentioned goods and chattels of the said John, on the occasion and for the purpose last aforesaid, to wit, at, &c.; and although he the said John afterwards, and before the redelivery of the said last-mentioned goods and chattels or of any part thereof unto the said John, to wit, on, &c. was ready and willing, and then and there tendered and offered to redeem the said last-mentioned goods and chattels, and to pay all and every sum and sums of money due and owing to the said George upon and for redemption of the same, and then and there required the said

George

- (2) "divers other goods and chattels"
- (3) "like"
- (4) "last-mentioned"
- (5) "they"
- (6) "further saith,"
- (7) "last-mentioned"
- (8) "last"
- (9) "last"
- (10) "last-mentioned"
- (11) "said"
- (12) "thereof"
- (13) "last-mentioned"
- (14) "last-mentioned"
- (15) "thereby became and were, and from thence hitherto have been and still are,"
- (16) "and altogether irrecoverable, either by him"
- (17) "George for the said"

George to redeliver the same to him the said John, and to suffer and permit him to redeem the same, according to the said last-mentioned promise and undertaking so by him made as aforesaid ; but contriving, &c. the said John in this behalf, did not, nor would when he was so requested as aforesaid, suffer or permit, nor hath he as yet suffered or permitted him the said John to redeem his said last-mentioned goods and chattels, or any part thereof ; but hindered and prevented him from so doing, and then and there refused to accept and take the money so tendered and offered by him the said John for and on account of such goods and chattels and the redemption thereof, nor did he then and there redeliver, nor hath he as yet redelivered the said last-mentioned goods and chattels, or any of them, or any part thereof, to the said John ; but then and there, and always from thence hitherto hath refused so to do ; and on the contrary thereof, afterwards, to wit, on, &c. converted and disposed of the same to his own use. (4th Count, goods sold and delivered. 5th Count, money laid out and expended, and paid, and lent, and advanced. 6th Count, money had and received ; account stated ; and common conclusion.)

V. LAWES.

Declaration for
not returning
note which was
delivered into the
hands of defen-
dant for safety.

MIDDLESEX, ff. S. C. complains of C. H. being, &c. : for that whereas heretofore, to wit, on, &c. in consideration that the said S. at the special instance and request of the said C. had then and there delivered to and deposited in the hands of him the said Charles a certain note of hand, commonly called a promissory note, for thirteen pounds ten shillings, drawn by one A. B. in favor of C. D. and by him indorsed to the said S. he the said Charles undertook, and then and there faithfully promised the said S. that he the said C. would return the said note, *or the value thereof*, to the said Samuel, when he the said Charles should be thereto requested ; and although the said Samuel afterwards, to wit, on, &c. requested the said Charles to return the said note, *or the value thereof*, unto him the said Samuel, according to his aforesaid promise in that behalf: Yet the said Charles, not regarding his said promise and undertaking, but contriving, &c. the said S. in this behalf, did not, when he was so requested as aforesaid, return, nor hath he as yet returned the said note, amounting to a large sum of money, to wit, the sum of thirteen pounds ten shillings of lawful, &c. *or the value thereof*, to the said S. ; but he so to do then and there and always hitherto hath wholly neglected and refused, and still refuses, to wit, at, &c. And whereas also afterwards, to wit, on, &c. &c. &c. (as the first Count, omitting what is in Italic, and go on) : Yet the said Charles, not regarding, &c. did not, &c. nor hath he as yet, &c. ; but he so to do then and there and always hitherto wholly neglected and refused, and converted and disposed of the said last-mentioned note, the same being of a large value, to wit, of the value of thirteen pounds ten shillings of lawful, &c. to his own use, to wit, at, &c. And whereas also afterwards, to wit, on,

&c.
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&c. in consideration that the said Samuel, at the like special instance and request of the said Charles, had then and there delivered, &c. to and in the hands of, &c. to be thereafter accounted for by him unto the said S. a certain other note of hand, &c. (as before), he the said Charles undertook, &c. would take due and proper care of the said last-mentioned note: Yet the said Charles, not regarding, &c. but, &c. the said S. in this behalf, did not take due and proper care of the said last-mentioned note; but on the contrary thereof, after the aforesaid bailment or delivery thereof to him the said Charles, to wit, on, &c. he the said Charles took so little and such bad care of the said last-mentioned note, and behaved so negligently in the premises, that the said note, being of a large value, to wit, of, &c. became and was, and from thence hitherto hath been and still is wholly lost unto him the said S.; whereby he hath been and still is hindered and prevented from obtaining payment of the same, to wit, at, &c. (Add the common Counts.)

V. LAWES.

LONDON, to wit. J. S. and J. P. complain of H. H. being, &c.: for that whereas the said John and J. on the twenty-first of January 1787, at London aforesaid, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap, were possessed of a certain bill of exchange in writing, as of their own bill of exchange, of the value of twenty pounds, purporting to be drawn by one J. D. upon the said H. H. for the sum of twenty pounds, to be paid to one R. C. or his order, which said bill was then and there indorsed by the said R. C.; and being so possessed thereof, the said H. in consideration that the said John and J. at the special instance and request of the said H. would deliver the said bill to the said H. and would leave the said bill with the said H. undertook, and to the said John and J. then and there faithfully promised, to deliver the same to them when he the said H. should be thereunto afterwards requested; and the said John and J. relying on the said promise and undertaking of the said H. did afterwards, to wit, on, &c. at, &c. deliver the said bill of exchange to the said H. and leave the said bill with him at his request. And whereas also (another Count same as first, only stating defendant to have promised to return the bill the next day): Yet the said H. not regarding his said several promises and undertakings in form aforesaid made, but contriving and fraudulently intending to deceive and defraud the said John and J. in this behalf, did not redeliver, or cause to be redelivered, the said bills of exchange, or either of them, to the said John and J. or either of them, the next day after the delivering thereof to the said H. or at any other time since, (although the said H. afterwards, to wit, on the twenty-second of April, and often since, &c.); but to deliver the said bills of exchange, or either of them, to the said John and J. or either of them, he the said H. hath hitherto wholly refused and still refuses. (Common Counts, &c.)

Declaration for not redelivering bill of exchange left for acceptance.

FOR

(a) In consideration plaintiff would deliver up certain writings detained by plaintiff as a security to B. who was indebted to plaintiff, defendant promised to pay the debt.

FOR that whereas at the time of the making of the promise and undertaking of the said defendant hereafter mentioned, one Peter O'Brien, esquire, was indebted to the said plaintiff in a large sum of money, to wit, the sum of two hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of him the said plaintiff, by him before that time done, performed, and bestowed in and about the business of the said P. and for the said P. and at his special instance and request; and also for money by the said plaintiff before that time laid out, expended and paid for the said P. and at his like special instance and request; and the said P. being so indebted, he the said plaintiff, before the making of the promise and undertaking of the said defendant hereafter mentioned, was possessed of and had in his custody divers writings, accounts, deeds, and other papers, belonging to and being the property of the said P. and which the said plaintiff then and there had a right to detain in his custody until the said money so owing to him should be paid; and the said P. being so indebted, and the said plaintiff being so possessed of the said deeds, writings, accounts, and papers, and they the said defendant and plaintiff being desirous of having the same out of the hands and possession of him the said plaintiff, on the fifth day of May A. D. 1783, at W. in the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would deliver up unto the said P. all and singular the aforesaid deeds, writings, accounts, and papers, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would take care and have the said plaintiff paid his above-mentioned demand on the said P.: And the said plaintiff avers, that he, confiding in the aforesaid promise and undertaking of the said defendant, he the said plaintiff afterwards, to wit, on the seventh day of May in the year aforesaid, at W. aforesaid, at the said instance and request of the said defendant, delivered unto the said P. all and singular the aforesaid deeds, writings, accounts, and papers, whereof the said defendant then and there had notice: Yet the said defendant, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet taken care to have the said plaintiff paid or satisfied his above-mentioned demand on the said P. nor hath the said P. or the said defendant, or any other person whatsoever, yet paid unto him the said plaintiff the aforesaid sum of money so due and owing from the said P. to the said plaintiff, or any part thereof (although the said defendant was requested by the said plaintiff to perform his aforesaid promise and undertaking so made to the said plaintiff as aforesaid, afterwards, to wit, on, &c. in the year aforesaid, and often afterwards, at W. aforesaid); but he to perform the same in any manner whatsoever hath hitherto wholly refused and still refuses; and the aforesaid sum of money,

(a) See Assumpsit respecting Securities.

so due and owing from the said P. to the said plaintiff as aforesaid, and every part thereof, is still wholly due and owing and unpaid to the said plaintiff, to the said plaintiff his damage of three hundred pounds; and therefore, &c.

AGAINST WHARFINGERS.

MIDDLESEX, to wit. Thomas Love complains of Jane Lambert, widow, being, &c. : for that whereas the said defendant, at the several times hereafter mentioned, and long before, was, and from thenceforth hitherto hath been, and still is, possessed of a certain wharf on the side of the river Thames in the parish of, &c. and for and during all the time aforesaid hath used, exercised, and carried on, and still doth use, exercise, and carry on the trade and business of a wharfinger there, to wit, at the parish aforesaid; and the said defendant being so possessed of the said wharf, and so using and exercising the said trade or business of a wharfinger as aforesaid, from the sixteenth November 1770, at, &c. the said plaintiff had purchased of J. W. B. B. and R. Y. a large quantity, to wit, one hundred chaldrons of coals of the value of one hundred and fifty pounds, then being in and upon the said river Thames, and had hired of the said W. B. and Y. a certain barge of and belonging to the said W. B. and Y. for the carrying of the said coals to, and delivering and landing the same at the said wharf of the said defendant to and for the use of the said plaintiff; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had caused the said barge, containing the said coals of the said plaintiff, to be delivered to the defendant at her said wharf, in order that the said coals might be there landed and delivered to and for the use of the said plaintiff, and had then and there undertaken and faithfully promised the said defendant to pay her a certain reasonable reward or sum of money for the liberty of landing and delivering the said coals at the said wharf of the said defendant, and for the said defendant's taking care of the said coals and barge until the said coals should be landed and delivered as aforesaid, the said defendant then and there, to wit, on the same day and year aforesaid, at, &c. aforesaid in the county aforesaid, undertook, and faithfully promised the said plaintiff to permit the said coals to be landed and delivered to and for the use of the said plaintiff at the said wharf; and although the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid in the said county, had and received the said barge, containing the said coals of the said plaintiff, for the purpose aforesaid: Yet the said defendant, not regarding, &c. did not, after the said barge and coals were so delivered to the said defendant as aforesaid, safely and securely keep the

Declaration against a wharfinger for not taking care of a barge of coals delivered at her wharf to be landed, but suffering them to be driven down the river and sunk and lost.

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FOR that whereas at the time of the making of the promise and undertaking of the said defendant hereafter mentioned, one Peter O'Brien, esquire, was indebted to the said plaintiff in a large sum of money, to wit, the sum of two hundred pounds of lawful money of Great Britain, for the work and labour, care and diligence, of him the said plaintiff, by him before that time done, performed, and bestowed in and about the business of the said P. and for the said P. and at his special instance and request; and also for money by the said plaintiff before that time laid out, expended and paid for the said P. and at his like special instance and request; and the said P. being so indebted, he the said plaintiff, before the making of the promise and undertaking of the said defendant hereafter mentioned, was possessed of and had in his custody divers writings, accounts, deeds, and other papers, belonging to and being the property of the said P. and which the said plaintiff then and there had a right to detain in his custody until the said money so owing to him should be paid; and the said P. being so indebted, and the said plaintiff being so possessed of the said deeds, writings, accounts, and papers, and they the said defendant and plaintiff being desirous of having the same out of the hands and possession of him the said plaintiff, on the fifth day of May A. D. 1783, at W. in the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would deliver up unto the said P. all and singular the aforesaid deeds, writings, accounts, and papers, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would take care and have the said plaintiff paid his above-mentioned demand on the said P.: And the said plaintiff avers, that he, confiding in the aforesaid promise and undertaking of the said defendant, he the said plaintiff afterwards, to wit, on the seventh day of May in the year aforesaid, at W. aforesaid, at the said instance and request of the said defendant, delivered unto the said P. all and singular the aforesaid deeds, writings, accounts, and papers, whereof the said defendant then and there had notice: Yet the said defendant, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not as yet taken care to have the said plaintiff paid or satisfied his above-mentioned demand on the said P. nor hath the said P. or the said defendant, or any other person whatsoever, yet paid unto him the said plaintiff the aforesaid sum of money so due and owing from the said P. to the said plaintiff, or any part thereof (although the said defendant was requested by the said plaintiff to perform his aforesaid promise and undertaking so made to the said plaintiff as aforesaid, afterwards, to wit, on, &c. in the year aforesaid, and often afterwards, at W. aforesaid); but he to perform the same in any manner whatsoever hath hitherto wholly refused and still refuses; and the aforesaid sum of money,

(a) See Assumpsit respecting Securities.

so due and owing from the said P. to the said plaintiff as aforesaid, and every part thereof, is still wholly due and owing and unpaid to the said plaintiff, to the said plaintiff his damage of three hundred pounds; and therefore, &c.

AGAINST WHARFINGERS.

MIDDLESEX, to wit. Thomas Love complains of Jane Lambert, widow, being, &c. : for that whereas the said defendant, at the several times hereafter mentioned, and long before, was, and from thenceforth hitherto hath been, and still is, possessed of a certain wharf on the side of the river Thames in the parish of, &c. and for and during all the time aforesaid hath used, exercised, and carried on, and still doth use, exercise, and carry on the trade and business of a wharfinger there, to wit, at the parish aforesaid; and the said defendant being so possessed of the said wharf, and so using and exercising the said trade or business of a wharfinger as aforesaid, from the sixteenth November 1770, at, &c. the said plaintiff had purchased of J. W. B. B. and R. Y. a large quantity, to wit, one hundred chaldrons of coals of the value of one hundred and fifty pounds, then being in and upon the said river Thames, and had hired of the said W. B. and Y. a certain barge of and belonging to the said W. B. and Y. for the carrying of the said coals to, and delivering and landing the same at the said wharf of the said defendant to and for the use of the said plaintiff; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had caused the said barge, containing the said coals of the said plaintiff, to be delivered to the defendant at her said wharf, in order that the said coals might be there landed and delivered to and for the use of the said plaintiff, and had then and there undertaken and faithfully promised the said defendant to pay her a certain reasonable reward or sum of money for the liberty of landing and delivering the said coals at the said wharf of the said defendant, and for the said defendant's taking care of the said coals and barge until the said coals should be landed and delivered as aforesaid, the said defendant then and there, to wit, on the same day and year aforesaid, at, &c. aforesaid in the county aforesaid, undertook, and faithfully promised the said plaintiff to permit the said coals to be landed and delivered to and for the use of the said plaintiff at the said wharf; and although the said defendant afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid in the said county, had and received the said barge, containing the said coals of the said plaintiff, for the purpose aforesaid: Yet the said defendant, not regarding, &c. did not, after the said barge and coals were so delivered to the said defendant as aforesaid, safely and securely keep the

Declaration against a wharfinger for not taking care of a barge of coals delivered at her wharf to be landed, but suffering them to be driven down the river and sunk and lost.

and Count, on her
assumpsit to
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landed.

the said barge and coals of the said plaintiff until the said coals should be landed and delivered at the said wharf as aforesaid, according to her said promise and undertaking; but on the contrary thereof, the said defendant, by herself and her servants, behaved so negligently, carelessly, and improvidently in this behalf, that by and through the mere carelessness, negligence, and improvidence of the said defendant, and other servants by her employed in that behalf, the said barge, containing the said coals of the said plaintiff, was afterwards, to wit, on the same day and year aforesaid, carried and drawn by the said water of the said river Thames from the said wharf of the said defendant down the said river, and there sunk in the said river, and damaged, spoiled, and lost, to wit, at, &c. aforesaid; whereby the said plaintiff not only lost the said coals, being of the value of pounds as aforesaid, but was forced and obliged to pay, and did pay to the said W. B. and Y. a large sum of money, to wit, the sum of thirty pounds for the loss of the said barge, to wit, at, &c. aforesaid in the said county. And whereas also, while the said defendant was such wharfinger as aforesaid, and was possessed of the said wharf, to wit, on, &c. the said plaintiff was possessed of divers, to wit, one hundred other chaldrons of coals of the value of other pounds, as of his own proper goods and chattels, then lying or being in a certain other barge or lighter in the said river of Thames, near unto and adjoining the said wharf of the said defendant, and which said coals the said plaintiff had caused to be brought and placed near unto the said wharf of the said defendant for the purpose of being there landed and delivered; and the said plaintiff being so thereof possessed, afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had caused the said last-mentioned coals, in the said last-mentioned barge or lighter, to be delivered to the said defendant, and had undertaken and faithfully promised the said defendant to pay her a reasonable reward or sum of money for the liberty of landing and delivering the said last-mentioned coals at her said wharf, and for taking care of the said coals in the said last-mentioned barge, until the said coals should be so landed and delivered, she the said defendant undertook, &c. to permit him the said plaintiff to land and deliver the said last-mentioned coals at the said wharf, and that she the said defendant would safely and securely keep the said last-mentioned coals until the same should be landed and delivered; and although the said defendant afterwards, &c. had and received the said last-mentioned coals of the said plaintiff for the purpose aforesaid: Yet the said defendant, not regarding, &c. did not safely and securely keep the said last-mentioned coals until the same were landed and delivered at her said wharf; but on the contrary thereof, the said defendant behaved so negligently, carelessly, and improvidently in that behalf, that by and through the mere carelessness, improvidence, and negligence of the said defendant, and her servants by her employed in that behalf, the said last-mentioned

tioned coals of the said plaintiff so being in the said last-mentioned barge or lighter, were, by the water of the said river, drawn and forced away from the said wharf of the said defendant, and sunk in the said river Thames; whereby the said last-mentioned coals, being of the value of, &c. were entirely destroyed and lost to the said plaintiff, of, &c. to wit, at, &c. (Other common Counts.)

G. WOOD.

MIDDLESEX, *ff.* William Arch complains of Charles Yorrall, being, &c.: for that whereas the said defendant now is, ^{Special assump-} and for the space of one year and more now last past, hath been ^{fit against a} a wharfinger, and now is, and during all that time hath been, an ^{wharfinger for} occupier and possessor of a certain wharf with the appurtenances, ^{not shipping} called, &c. situate and being in the parish of, &c. in the county of Surry, to wit, at Westminster in the county of Middlesex aforesaid, at which said wharf he the said defendant, during all the time aforesaid, hath exercised and carried on, and still doth exercise and carry on his aforesaid business of a wharfinger, to wit, at Westminster aforesaid. And whereas during the said time that the said defendant so was a wharfinger, and exercised and carried on his said business of a wharfinger at his said wharf, to wit, on the twenty-seventh day of March A. D. 1769, to wit, at W. aforesaid, the said plaintiff, at the instance and request of said defendant, caused to be delivered to him the said defendant at his said wharf sundry goods and merchandizes, to wit, &c. of the said plaintiff, and being of a large value, to wit, of the value of, &c. to be by the said defendant at his said wharf shipped and put on board a certain ship or vessel called the Spackman, whereof one Thomas Halse was master or commander, then lying in the river of Thames at or near the said wharf of the said defendant, to wit, at W. aforesaid, and then bound on a voyage from thence to Falmouth, and which said ship or vessel was then loading or about to load at the said wharf, to be carried in such ship or vessel from thence to F. aforesaid on freight for the said plaintiff for certain gain and reward called wharfage, by the said plaintiff to be paid to the said defendant for his shipping thereof at his said wharf; and in consideration thereof, the said defendant, on same day and year aforesaid, at W. aforesaid, undertook, and then and there faithfully promised the said plaintiff to ship and put the said goods and merchandizes on board the said ship or vessel so then bound from thence for F. aforesaid, and then lying at or near the said wharf, and then loading or about to load at the said wharf as aforesaid, to wit, at W. aforesaid; and although the said defendant, on the same day and year aforesaid, to wit, at W. aforesaid, had and received the said goods and merchandizes to ship and put on board the said ship or vessel as aforesaid; and although the said ship or vessel was then loading or about to load at the said wharf, and then bound from thence to F. aforesaid; and although the said ship or vessel hath been since loaded and dispatched on her said voyage,

voyage, and hath arrived in safety at F. aforesaid, whereof the said defendant had due notice : Yet the said defendant, not regarding his said promise and undertaking so by him made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, he the said defendant hath not shipped or put on board the said ship or vessel, or on board any other ship or vessel, the said goods and merchandizes, or any part thereof, nor hath the said defendant, by any means or conveyance whatsoever, sent the said goods and merchandizes, or any part thereof, to F. aforesaid (although to perform his aforesaid promise and undertaking so by him made in this behalf as aforesaid the said defendant was requested by the said plaintiff afterwards, to wit, on the same day and year aforesaid, and often afterwards, to wit, at W. aforesaid) ; but he to do this hath hitherto wholly refused, and still refuses so to do.

J. MORGAN.

Declaration against a wharfinger, to whose care plaintiff had intrusted sixty firkins of butter, for only delivering part to plaintiff, and refusing to deliver the remainder.

LONDON, to wit. R. R. complains of S. L. being, &c. : for that whereas on the nineteenth of February 1787, at, &c. in consideration that the said R. at the special instance and request of the said S. (he the said S. then and there being a wharfinger), had delivered or caused to be delivered to the said S. divers goods and merchandizes, sixty firkins of butter of the said R. of great value, to wit, of the value of twenty pounds of, &c. to be by him the said S. safely and securely kept and preserved at a certain wharf of the said S. called or known by the name of Wharf, for a certain reasonable reward to be therefore paid by the said R. to the said S. he the said S. *assumpsit*, &c. safely and securely to keep and preserve the said goods and merchandizes, and to deliver the same to the said R. whenever he the said S. should be thereunto afterwards requested ; and although the said S. had and received the said goods and merchandizes on the day and year aforesaid, at, &c. ; and although the said S. afterwards, to wit, on, &c. at, &c. did deliver divers, to wit, firkins of butter, part and parcel of the said sixty firkins of butter so delivered to the said S. as aforesaid to the said R. according to the form and effect of his said promise and undertaking so made as aforesaid : Yet the said defendant, not further regarding, &c. but contriving, &c. hath not delivered the residue of the said sixty firkins of butter, or any part thereof to the said R. according to the form and effect of the said promise and undertaking so by him made as aforesaid, (although so to do he the said S. was by the said R. afterwards, to wit, on, &c. and often since, at, &c. requested), but to deliver the residue of the said sixty firkins of butter to the said R. he the said S. hath hitherto wholly refused and still doth refuse, &c. (Common Counts and breach.)

LONDON,

LONDON, *ff.* John Papley complains of Edward Langdon being, &c. in a plea of trespass on the case : for that whereas the said plaintiff, on the twenty-eighth day of October A. D. 1760, and long before, was and from thence hitherto has been and still is sole owner of a certain ship or vessel called the Sally, which said ship, whilst the said plaintiff was owner thereof, to wit, on same day and year aforesaid, was arrived from the island of Jamaica in the West Indies unto the port of London, and had brought in her, amongst other goods, two casks of indigo on freight, to be therefore paid by the proprietor or consignee of the said indigo for the importation and bringing of the same in the said ship from the said Island to London aforesaid; and the said ship, with the said indigo on freight as aforesaid, being so arrived at and in the port of London aforesaid, it then belonged to and was the duty of plaintiff, as such sole owner of the said ship, to land the said indigo at his own risque from on board the said ship upon some one of the keys at or near to his majesty's custom-house in the city of London, for the use of the said proprietor or consignee thereof; and thereupon the said plaintiff afterwards, to wit, on the said twenty-eighth of October in the year aforesaid, at London, &c. aforesaid, at the instance of said defendant, retained and employed him said defendant, he the said defendant then being a wharfinger and possessed of a certain wharf called A. wharf, in London aforesaid, at or near to the said custom-house, and a proper wharf for landing the said goods thereon, to fetch and take away the said two casks of indigo from and out of the said ship in the boat or lighter of said defendant, and to bring the same to the said wharf, and to land the same on the said wharf for the use of the said proprietor or consignee thereof, for a reasonable reward or hire for the lighterage, waterage, and wharfage thereof, to be therefore paid to said defendant; and said defendant then and there accordingly, and in consideration of such reward or hire, undertook to fetch and take away the said two casks of indigo from and out of the said ship in the boat or lighter of said defendant, and to bring the same to the said wharf of said defendant, and to land the same on the said wharf for the use of the said proprietor or consignee thereof: and although said defendant, in pursuance of the said employ and retainer, did afterwards, to wit, on same day and year aforesaid, fetch and take away in his said boat or lighter the said two casks of indigo from and out of the said ship for the purpose aforesaid, and afterwards, to wit, on same day and year aforesaid, did bring the same to the said wharf of the said defendant, and might then and there have landed the same on the said wharf, and ought to have done: Yet said defendant then and there, in the execution of his said employ, so badly, negligently, carelessly, and improvidently behaved himself, and took so little and such bad care of his duty and behaviour in this behalf, that said defendant for a long and unreasonable space of time, to wit, for the space of five days next after that the said two casks of indigo were

Declaration at the suit of the purser of a ship against a wharfinger, for negligence in not landing indigo, whereby it was lost, and plaintiff obliged to pay for it to the consignee.

so brought by said defendant to the said wharf, neglected and omitted to land the said two casks of indigo on the said wharf, and permitted and suffered the same to lie and remain in the said boat or lighter during all that time without their being landed thereout, whereby one of the said casks of indigo, being of the value of two hundred pounds, was, while the same so remained unlanded in the said boat or lighter, by and through the mere default of said defendant in not landing the same there, taken away from and out of the said boat or lighter by some person or persons wholly unknown to said plaintiff, and thereby wholly lost, and said plaintiff was thereby forced and obliged to pay, and afterwards, to wit, on first December in A. D. 1760 aforesaid, at London, &c. aforesaid, did accordingly pay to one Joseph Taylor, the proprietor or consignee of the said one cask of indigo so stolen and taken away as aforesaid, a large sum of money, to wit, the sum of two hundred pounds, being the value of the said cask of indigo, to wit, at London, &c. aforesaid.

Drawn by MR. WARREN.

BY AND AGAINST * ATTORNIES, PROCTORS, &c.

Declaration on special *assumpsit* against an attorney, for not filing an affidavit of the delivery of a declaration to a prisoner in the custody of the sheriff, whereby he became superceded. .

MIDDLESEX, to wit. W. P. complains of J. B. gent. one of the attornies of the court of our lord the now king, present here in court in his own proper person : for that whereas one W. N. on, &c. was indebted to the said plaintiff in a certain large sum of money, by virtue of several promises and undertakings before that time made by the said W. N. to the said plaintiff ; and the said sum of money being wholly unpaid, and the promises and undertakings being wholly unperformed, he the said plaintiff, for the recovery of his damages by him sustained on occasion of the not performing the several promises and undertakings aforesaid, to wit, on, &c. in the eighteenth year of the reign of our sovereign lord the now king, sued and prosecuted out of the said court of our said lord the now king, before the king himself (the said court then and still being held at Westminster, in the said county of Middlesex), a certain precept of our said lord the king called a bill of Middlesex, against the said W. N. whereby the then sheriff of the said county of Middlesex was commanded to take the said W. N. if he might be found in his bailiwick, and him safely keep, so that he might have his body before our lord the king at Westminster, on, &c. to answer to the said plaintiff in a plea of trespass, and also to a bill of the said plaintiff against the said W. N. for twenty

* I have purposely postponed this head to the last heads, Carriers, &c. and Wharfingers, to connect the latter with the precedents on bailment and contracts concerning delivery, &c. of goods, considering carriers, &c. bailees for various purposes.

See Misfeasance, Negligence, and Nonfeasance, in Assumpsit in the Index, for all these Declarations, &c. by and against Attornies.

pounds, upon promises, according to the custom of the court of our said lord the king, before the king himself, to be exhibited; and that the said sheriff should then have there that precept; which said precept afterwards, and before the delivery thereof to the said then sheriff to be executed as herein is mentioned, was duly indorsed for bail for ten pounds and upwards, by virtue of a certain affidavit of the cause of action, duly affiled in the said court of our said lord the king, before the king himself, in that behalf, according to the form and effect of the statute in that case made and provided; which said precept so indorsed as aforesaid, afterwards, and before the return thereof, to wit, on, &c. in the said eighteenth year of, &c. was delivered to A. B. and C. D. esquires, who then and from thenceforth until and at and after the return of the said precept were sheriff of the said county of Middlesex, to be by them executed in due form of law; by virtue of which said precept the said A. B. and C. D. so being sheriff of the said county of Middlesex as aforesaid, afterwards, and before the return of the said precept, to wit, on, &c. within the bailiwick of the said sheriff, that is to say, at Westminster, in the said county of Middlesex, took and arrested the said W. N. by his body, and then and there had and detained him in their custody by virtue of the said precept, at the suit of the said plaintiff, from thence until the time of his being superdeded and discharged out of custody, as hereinafter is mentioned: And the said plaintiff further says, that he the said plaintiff, for the recovery of his damages by him sustained on occasion of the not performing of the said several promises and undertakings, afterwards, and before the end of the next Term after the said precept or bill of Middlesex was returnable; that is to say, in Trinity Term, in the eighteenth year of, &c. in the said court of our said lord the king, before the king himself (the said court then and still being held at Westminster, in the said county of Middlesex), impleaded the said W. N. so being in custody as aforesaid, in a plea of trespass upon the case, upon promises, to the said plaintiff's damage of forty pounds, and by his declaration, then and there duly filed in the said court, complained against the said W. N. being in the custody of the then sheriff of Middlesex, by virtue of his said majesty's precept of Middlesex, for the non-performance of the said promises and undertakings, to the damage of the said plaintiff of forty pounds, and afterwards, to wit, on, &c. in the same Term, caused a true copy of the said declaration to be delivered to the said W. N. so being in the custody of the said sheriff of the said county of Middlesex as aforesaid: And the said plaintiff further says, that by the rule and practice of the same court, before the end of twenty days next after the end of the next Term after the said precept or bill of Middlesex was returnable, an affidavit ought to have been filed with the clerk of the rules of the delivery of the said copy of the said declaration, and of the time when, and the persons to whom, the said copy was delivered; and that the said W. N. was arrested or charged in custody by process out of the same court, returnable before the delivery of the

the said copy, in order to prevent the said W. N. from being discharged out of custody without satisfying the said plaintiff for his damages which he had sustained by reason of the non-performance of the said promises and undertakings so made by the said W. N. as aforesaid : And the said plaintiff further says, that long before the expiration of the said twenty days, to wit, on, &c. at, &c. in, &c. he the said plaintiff retained and employed the said defendant as attorney or agent of and for him the said plaintiff, to cause such affidavit to be filed with the clerk of the rules as aforesaid, for his reasonable fees in that behalf to be paid him by the said plaintiff for the same ; and thereupon the said defendant, in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would cause such affidavit to be filed accordingly : And the said plaintiff further says, that the said defendant, not regarding his duty in this respect, nor his promise and undertaking so made as aforesaid, but contriving and fraudulently intending to deceive and injure the said plaintiff in this behalf, and to deprive him of the benefit of his said suit, did not cause such affidavit to be filed with the clerk of the rules aforesaid, but wholly neglected and omitted so to do ; and by reason of which said neglect and omission of said defendant, the said W. N. was afterwards, to wit, on, &c. in the eighteenth year aforesaid, at, &c. superseded and discharged out of the custody of the said sheriff of the said county of Middlesex, the damages aforesaid being wholly unpaid and unsatisfied to the said plaintiff ; and the said plaintiff is in great danger of losing the same. (Add the money Counts ; and common conclusion to those Counts.)

Declaration against an attorney, for neglecting to enter an appearance to an action of trespass brought against plaintiff and his three bailiffs for taking a distress, but entering an appearance for plaintiff only, *per quod* judgment was signed against the bailiffs, whom plaintiff was obliged to indemnify, and writ of enquiry executed, and put to great expence in applying to the Court to set aside the judgment.

MIDDLESEX, to wit. T. N. v. J. C. For that whereas he the said plaintiff heretofore, and before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. had duly authorised one A. B. to distrain the goods and chattels of one C. D. as bailiff, of and for, and on the behalf of him the said plaintiff, for certain rent in arrear and unpaid to the said plaintiff ; in pursuance whereof the said A. B. afterwards, and before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. as bailiff of the said plaintiff, and for and on his behalf, did duly seize and distrain on divers goods and chattels of the said C. D. as a distress for the said rent so in arrear and unpaid as aforesaid ; and immediately after the distraining thereof, one J. L. and one J. B. servants of the said plaintiff, and by his command, duly had possession thereof, for and on the part and behalf of him the said plaintiff, to keep the same according to law, to wit, at, &c. And whereas the said C. D. heretofore, and before the making of the promise and undertaking of the said defendant hereafter next mentioned, was obliged to pay the damages and costs on both sides, and was likewise put to great expence in applying to the Court to set aside the judgment,

tioned,

tioned, to wit, in Hilary Term, in the twenty-eighth year of the reign of King George the Third, of the bench here, impleaded the said plaintiff and the said A. B. J. L. and J. B. in a certain plea of trespass for and on account of the said distress so made as aforesaid, to the damage of the said C. D. of one thousand pounds, as he said, and for which he brought his suit, to wit, at, &c. against which said action or suit he the said plaintiff was bound to indemnify and defend the said A. B. J. L. and J. B. to wit, at, &c. *of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice* : and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, then being an attorney at law, had retained and employed the said defendant, as such attorney at law, to act for him the said plaintiff and the said A. B. J. L. and J. B. as their attorney in and about the defence of the suit aforesaid, and to defend the same for the said plaintiff and the said A. B. J. L. and J. B. ; and that he the said defendant had undertaken and faithfully promised the said defendant all his necessary, just, and reasonable fees and disbursements on that occasion, he the said defendant then and there, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff, that he would well and faithfully, honestly and diligently perform and execute the business and duty of such attorney in the said suit, and act as such attorney in and about the defence of the said suit, and defend him the said plaintiff and the said A. B. J. L. and J. B. therein, according to the merits of their case, and to the utmost of his skill and abilities : And the said plaintiff further saith, that he the said Thomas, having so retained the said defendant as an attorney to defend the said suit as aforesaid, it was thereupon the business and duty of the said defendant, as such attorney of and for the said plaintiff and the said A. B. J. L. and J. B. in the said suit, to have

(1) *caused an appearance to have been entered in the said court here for the said plaintiff and the said A. B. J. L. and J. B. to the said suit of the said A. B. to wit, at, &c. ; and although the said defendant had not any orders or directions from the said plaintiff, or from any other person, to the contrary ; and although the said defendant did afterwards, to wit, on, &c. at, &c. duly enter an appearance for him the said plaintiff in the said court here to the said suit of the said C. D. ; and although the said A. B. J. L. and J. B. as well as the said plaintiff, had good cause of defence thereto ; and although the said defendant well knew the same, and was well acquainted therewith ; Yet the said defendant, well knowing all and singular the premises, but not regarding his duty and business of such attorney of and for the said plaintiff and the said A. B. J. L. and J. B. as aforesaid, in defence of the suit aforesaid, so negligently, carelessly, and inadvertently conducted and behaved himself in his said employment as such attorney in this behalf as aforesaid, that*

(2) *he the said defendant did not enter or cause to be entered any appearance in the said court here for the said A. B. J. L. and J. B. or for any or either of them, to the said suit of the said C. D. but wholly neglected and omitted so to do ; by means whereof*

(In 2d Count,) (1) "defended the same according to the merits thereof, to wit, at, &c."

(In 2d Count,) (2) "for want of due care and diligence of the said defendant in judgment the premises."

judgment was not only afterwards, to wit, on, &c. at, &c. duly signed in the said court here in the said suit against the said A. B. J. L. and J. B. but afterwards, to wit, on, &c. at, &c. a jury of the county duly enquired of and assessed the damages of the said C. D. in that behalf against the said A. B. J. L. and J. B. to one half-penny each, to wit, at, &c. ; by means of which said premises he the said plaintiff was forced and obliged for to pay, and did afterwards, to wit, on, &c. at, &c. pay not only the damages aforesaid, so adjudged as aforesaid, but also to pay and allow a large sum of money, to wit, the sum of seventy pounds, for the costs of the said C. D. as against the said A. B. J. L. and J. B. in the suit aforesaid ; and also to expend another large sum of money, to wit, the sum of thirty pounds, in applying to the said court here to set aside the judgment aforesaid, so signed as aforesaid ; and the said plaintiff is otherwise greatly injured and damnified, to wit, at, &c. *And whereas* heretofore, and before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. had duly authorised one, &c. &c. (Finish this Count same as the 1st. only omitting what is in *Italic*. and inserting what is in the margin. Add the money Counts and common breach.)

Declaration by one attorney against another attorney on a promise to undertake the soliciting and conducting certain business relative to disputes with respect to the appointment of overseers, and to pay one half the profits to the plaintiff who had relinquished his retainer, by the consent of the parishioners, in defendant's favour to succeed him.

LONDON, *ss.* Samuel A. H. gent, complains of Benjamin W. gent. one of the attornies of the court of our lord the now king, before the king himself, present here in court in his own proper person : for that whereas the said Samuel A. before and at the time of the making of the promise and undertaking of the said Benjamin hereafter next mentioned, had been and was an attorney and solicitor, and retained and employed as such by and on the part of certain parishioners of the parish of St. Pancras in the county of Middlesex, in the conducting and soliciting of certain disputes and controversies which were then depending and undetermined, relative to the appointment of overseers of the poor for the parish, to wit, at the parish of St. Mary-le-Bow, in the ward of Cheap, in L. aforesaid : and thereupon heretofore, to wit, on the day of A. D. 1788, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, in consideration that the said S. A. at the special instance and request of the said Benjamin, then being also an attorney and solicitor, and with the consent and approbation of the aforesaid parishioners, would relinquish his said retainer and employment, in order that the said Benjamin might succeed thereto, he the said Benjamin, with such consent and approbation as aforesaid, then and there undertook and faithfully promised the said S. A. that he the said Benjamin would account with the said S. A. for all such profits as should be acquired and received by him from the further conducting and soliciting of such disputes and controversies, and would pay to the said S. A. one half part of all such profits : And the said S. A. says, that he, so confiding in the said promise and undertaking of the said Benjamin, did afterwards, to wit, on the day and year aforesaid, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, with the consent and approbation of the said parishioners, relinquish his retainer and employment, in order

order that the said Benjamin might succeed thereto ; and that the said Benjamin, having then and there accordingly succeeded to the same, did, from the farther conducting and soliciting of such dispute and controversies, acquire sundry profits to a large amount, which he afterwards, to wit, on the twenty-fifth of January A.D. 1790, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, received : Yet the said Benjamin, not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said S. A. in this behalf, hath not (although often requested by the said S. A.) accounted with him for the profits so received as aforesaid, or for any part thereof, nor hath he paid to the said S. A. one half, or any part of such profits, but hath hitherto wholly refused, and still refuses so to do. And whereas the said Benjamin afterwards, to wit, on the day and year last aforesaid, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, was indebted to the said S. A. in the sum of one hundred pounds of lawful money of Great Britain, for money by the said Benjamin before that time had and received for the use of the said S. A. ; and being so indebted, he the said Benjamin, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, undertook and faithfully promised the said S. A. to pay him the said last-mentioned sum of money when he the said Benjamin should be thereto afterwards requested : Yet the said Benjamin, not regarding his said last-mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said S. A. in this behalf, hath not (although since requested by the said S. A.) paid him the said last-mentioned sum of money, or any part thereof, but hath hitherto wholly refused, and still refuses so to do, to the damage of the said S. A. of one hundred pounds ; and therefore he prays relief, &c. (Pledges, &c.) S. MARRYATT.

MIDDLESEX, ff. Frederick Dutton complains of Thomas Stayle and James Rake, executors of the last will and testament of William Monk deceased, being in the custody, &c. : for that whereas, before the time of the making of the promise and undertaking of the said William in his lifetime hereafter next mentioned, to wit, on, &c. at, &c. and within the jurisdiction of the court hereafter mentioned, one John Watts was indebted to the said Frederick in a large sum of money, to wit, the sum of twenty pounds and upwards, for the wages and salary of the said Frederick, then due and owing from the said J. W. to the said Frederick, for the said Frederick his service of the said John Watts, at, &c. within the jurisdiction aforesaid, and for a long time before then Declaration against executor by plaintiff who had employed defendant's testator (an attorney) to bring an action against one J. W. with whom plaintiff had lived as servant ; J. W. was arrested at the suit of the said plaintiff, and bail was put in, but not according to the regular course of the practice of the court of king's palace, whereby plaintiff could not recover his debt and damages : Plaintiff afterwards arrested one of the bail, but owing to the bad conduct of defendant in not having the bail-piece duly acknowledged before the judges, an action was brought against plaintiff by the said bail for false imprisonment, &c. &c.

elapsed, and for certain work and labour of him the said Frederick by him for the said John, and at his special instance and request before that time there, within the jurisdiction aforesaid, done and performed, and for money by him the said Frederick to the said John, and at his like request before that time there lent and advanced, and for other money by him the said Frederick, and to and for the use of the said John, and at his like request before that time there paid, laid out, and expended, and for other money to and for the use of the said Frederick before that time had and received by the said John; and being so indebted, he the said John afterwards, to wit, on, &c. undertook, &c.; and the said sum of money being wholly unpaid, and the said promise and undertaking of the said John being wholly unperformed, he the said Frederick then and there proposed and determined to sue the said John Watts at law, and to hold the said John Watts to special bail by proper process to be issued out of the court hereafter mentioned, and to proceed to judgment in such court for the recovery of his damages by him sustained on the occasion aforesaid; of all which said premises the said William in his lifetime afterwards, to wit, on, &c. at, &c. had notice; and thereupon the said Frederick afterwards, to wit, on, &c. at, &c. applied to the said William Monk in his lifetime, he the said William then being one of the attornies of the said court of the king's palace at Westminster, in order to retain and employ the said William as such attorney of that court, to commence and prosecute such action at law on the occasion aforesaid against the said John Watts, and the said Frederick did then and there retain and employ the said William in his lifetime as such attorney on the occasion aforesaid accordingly, for certain fees, hire, and reward to be therefore paid by the said Frederick to the said William in his lifetime; and thereupon the said William in his lifetime then and there, in consideration of the premises, undertook and faithfully promised the said Frederick to commence and carry on and conduct the said intended suit for the said Frederick against the said J. W. in a proper manner, and to take due and proper care thereof: And the said Frederick further says, that afterwards, to wit, at the court of the king's palace at Westminster, held at Southwark aforesaid in the said county of Surry, within the jurisdiction of the said court, on Friday the same day and year last aforesaid; before William earl Talbot, then steward of the king's household, sir Sidney Meadows, knight, then marshal of the said household, and Thomas Kymer, esquire, then steward of the said court, judges of the court aforesaid, by virtue of the letters patent of Charles the Second, late king of E. and so forth, bearing date at Westminster the fourth day of October in the sixteenth year of his reign; the said Frederick, for the recovery of his damages aforesaid, and in his proper person, levied his certain plaint, x and complained against the said J. W. of a plea of trespass on the case to the damage of thirty pounds, and then and there found pledges of prosecuting the same, to wit, John Doe and Richard Roe: And the said Frederick farther says, that afterwards, to wit, on, &c. at, &c. and within

within the jurisdiction aforesaid, the said J. W. was taken and arrested by his body at the suit of the said Frederick, in the plea (1) aforesaid, (1) "last" and by virtue of a certain writ of our lord the now king, called a special *capias ad respondendum*, being then issued by the said William in his lifetime as such attorney as aforesaid, out of the said court upon the said (2) plaint, and which said writ was then and there (2) "last" indorsed for bail for twenty pounds, by virtue of an affidavit of the cause of action of the said Frederick against the said J. W. in that behalf before then made by the said Frederick, and filed in the said court; of all which said (3) premises the said William in his (3) "last-men- lifetime, as the said attorney of the said Frederick (4), then and tioned" there had notice; and thereupon afterwards, to wit, &c. at the (4) "in the said court of the king's palace of Westminster, held at Southwark last suit" aforesaid in the county of Surry, within the jurisdiction of the said court, on Friday the twenty-first day of, &c. in the twenty-second year of the reign of our lord the now king, (5) one Ralph (5) "the said" Hodgson, he the said Ralph then being one other of the attornies of the said court of the king's palace aforesaid, and acting as attorney for the said John Watts in defending the said (6) action for (6) "last-men- him the said J. W. at the suit of the said Frederick, brought into tioned" the said court of the king's palace, in the said palace, in the said (7) (7) "last-men- suit, a certain paper writing as and for a special bail-piece for the tioned" said J. W. in the said action, with the names and additions of two certain good and responsible persons, to wit, one William Hodgson and one Andrew Wood, written thereon, as and for special bail for the said John Watts in the said action at the suit of the said Frederick; (8) and which said paper writing, in order to have become and been a real special bail-piece in the said suit for the said J. W. binding upon the said W. H. and A. W. ought, by the course and practice of the said court from the time of the creation thereof hitherto used and approved of in the same, to have been acknowledged by the said two persons, before some of the said judges of the said court as such bail as aforesaid; and thereupon it then and there became and was the duty of the said William in his lifetime as such attorney for the said Frederick as aforesaid, in the proper conduct and management of the said suit, and in the taking due and proper care thereof, to have taken care that the said paper-writing, purporting to be a special bail-piece as aforesaid for the said John Watts, had been regularly and duly acknowledged in the said action before he proceeded to the trial of the said action for the recovery of the said damages of the said Frederick by him sustained on the occasion aforesaid, (9) of all which said premises (8) "and the said Ralph then and there, as such attorney as aforesaid, filed the said paper-writing last-mentioned in the said court of record, as and for a special bail-piece in the said action for the said J. W. at the suit of the said Frederick;" (9) "or proceeded against the said W. H. and A. W. or either of them, upon the said supposed special bail-piece;" the said William in his lifetime then and there had notice: Yet the said William in his lifetime, not regarding his aforesaid promise and undertaking, but contriving, &c. the said Frederick in this respect, did not carry on and conduct the said suit for the said Frederick against the said J. W. in a proper manner, or take due and proper care thereof, or see or take proper care that special bail for the said J. W. was or had been duly acknowledged in the said action before he further proceeded therein towards a trial for the recovery of the damages aforesaid, according to the course and practice

practice of the said court on the occasion aforesaid (although often requested by the said Frederick so to do); but he to do this hath hitherto wholly refused and neglected; and on the contrary thereof, the said William in his lifetime, as the attorney of the said Frederick, without the said paper-writing being acknowledged as aforesaid, and without any special bail being duly put in for the said J. W. in the said action, negligently, carelessly, irregularly, incautiously, ignorantly, and improperly proceeded in the said action or suit in the said court, at the suit of the said Frederick, to a trial thereof, and until the said Frederick afterwards, to wit, at the court of the king's palace of Westminster, held at Southwark aforesaid in the said county of Surry, and within the jurisdiction of the said court, on Friday the third day of May in the twenty-second year aforesaid, by the consideration and judgment of the said court, recovered against the said J. W. his damages by him sustained, as well on the occasion aforesaid as for his costs and charges by him about his suit in that behalf expended, to twenty-three pounds six shillings x: And the said Frederick further says, that the said twenty-three pounds still remain wholly unpaid to the said Frederick, and the said Frederick necessarily laid out and expended a large sum of money, to wit, the sum of twenty pounds, in and about the carrying on the said action or suit, and that no special bail whatever hath been ever put in for the said J. W. in the said action; and that the said J. W. before the said recovery of the said damages, costs, and charges aforesaid, to wit, on, &c. at, &c. absconded and secreted himself, and hath ever since that time hitherto absconded and secreted himself, and still doth abscond and secrete himself in places unknown to the said Frederick; whereby, and for want of special bail being put in for the said J. W. in the said action, the said Frederick hath wholly lost the said damages, costs, and charges so recovered by him as aforesaid, and the said necessary expence of his money so laid out by him as aforesaid. And whereas before the time of the making of the promise and undertaking of the said William in his lifetime hereafter next mentioned, to wit, on, &c. at, &c. and within the jurisdiction of the said palace court, the said J. W. was indebted to the said Frederick in another large sum of money, to wit, in the sum of other twenty pounds and upwards, for the wages and salary of the said Frederick then due and owing from the said J. W. to the said Frederick for the said F. his service of the said J. W. at, &c. for a long time before then elapsed, and for certain other work and labour of him the said Frederick by him for the said John, and at his special instance and request before that time, then within the jurisdiction aforesaid, done and performed, and for money, &c. lent and advanced, &c. and for other money, &c. paid, laid out, and expended, &c. money had and received, &c.; and being so indebted, &c. &c.; and the said sum of money last-mentioned being wholly unpaid, and the said promise and undertaking of the said John last-mentioned being wholly unperformed, he the said Frederick then and there prepared and determined to sue the said J. W. at law, and to hold the said John Watts to special

sd Count, testator retained to hold J. W. to bail; bail put in irregularly; notwithstanding testator proceeded to judgment in the suit against the bail by *scire facias*, and one of the bail taken in execution; the judgment set aside, and he brought an action against plaintiff, for false imprisonment, whereby plaintiff put to expence in maintaining the judgment and defending the act on.

special bail by proper process to be issued out of the said court of the king's palace, and to proceed in the said court for the recovery of his damages by him sustained on the occasion last aforesaid; of all which said premises last mentioned the said William in his lifetime afterwards, to wit, on, &c. had notice: and thereupon the said Frederick afterwards, to wit, on, &c. applied to the said W. M. in his lifetime, he the said William then being, &c. in order to retain and employ, &c. to commence and prosecute such action and proceedings at law in the said court on the occasion last aforesaid against the said J. W. and to cause the said J. W. to be arrested and held to special bail in such action; and if bail above were pretended to be put in for the said J. W. in such action, to take due and proper care that the same were properly put in and acknowledged in such action; and the said F. did then and there retain and employ him the said William in his lifetime as such attorney on the occasion last aforesaid accordingly, for certain fees, &c. to be therefore paid by the said Frederick to the said William in his lifetime; and thereupon the said William in his lifetime, then and there, in consideration of the premises last aforesaid, undertook, &c. the said Frederick to commence, carry on, and conduct the said last-mentioned intended action and proceedings for the said Frederick against the said J. W. in a proper manner, and to take due and proper care thereof, and to cause the said J. W. to be arrested and held to special bail in such action if he possibly could; and if special bail were pretended to be put in for the said J. W. in such action, to take due, &c.: And the said Frederick further saith, that afterwards, to wit, at, &c. before William earl of, &c. judge of the court aforesaid, by virtue of the letters patent aforesaid, the said Frederick, for the recovery of his damages last aforesaid, and in his proper person, levied his certain other plaint, &c. &c. (Go on as from the first to the second mark x, only omitting what is in *Italic*, and inserting what is in margin, then proceed thus): And that the said William, as the attorney of the said Frederick, afterwards, to wit, on, &c. in the twenty-second year aforesaid, sued the said W. H. and A. W. at law in the said palace court by writ of *scire facias*, on such pretended recognizance of bail as aforesaid, and proceeded in such suit until the said William in his lifetime, as such attorney as aforesaid, afterwards, to wit, on, &c. signed a certain judgment in the said court against the said W. H. and A. W. for the said damages, costs, and charges at the suit of the said Frederick upon the said pretended recognizance of bail of the said W. H. and A. W.; and the said William in his lifetime, as such attorney, afterwards, to wit, on, &c. caused and procured the said Andrew to be taken in execution by his body at the suit of the said Frederick, under pretence of a certain writ of *capias ad satisfaciendum* issued out of the said palace court by the said William in his lifetime, as such attorney as aforesaid, at the suit of the said Frederick against the said Andrew Wood and the said W. H. founded upon the said last-

last-mentioned judgment, and to be kept and detained in custody on that occasion for a long time, to wit, for the space of five days then next following, and until the said Andrew, for the obtaining his release and discharge from his said imprisonment, was forced and obliged to lay out and expend, and did then and there necessarily lay out and expend a large sum of money, to wit, the sum of five pounds in and about the obtaining of his release and discharge from his said imprisonment: And the said Frederick in fact says, that afterwards, to wit, on, &c. the said judgment and execution against the said W. H. and A. W. as such supposed bail as aforesaid, were totally set aside in and by the said court, and rendered null and void, and the said A. W. afterwards, to wit, in Easter term in the twenty-third year, &c. for the recovery of his damages by him sustained on occasion of the committing of the said trespass, assault, and false imprisonment upon him as aforesaid, sued the said Frederick, as well as the said William in his lifetime, at law, in the court of our lord the now king, before the king himself, at Westminster aforesaid, and is proceeding in that plea against the said Frederick to obtain final judgment and execution against him therein; whereof the said William in his lifetime then and there had due notice; by means of all which said last-mentioned premises, and inasmuch as the said J. W. hath absconded and secreted himself so as to avoid being taken in execution for the damages so recovered as last aforesaid, and is unable to pay the same, the said Frederick hath wholly lost his said damages; and the said Frederick hath been forced and obliged fruitlessly to lay out and expend, and hath laid out and expended a large sum of money, to wit, the sum of forty pounds, in and about the carrying on the said suit against the said J. W. and the said process against the said W. H. and A. W. and in endeavouring to support the said judgment and execution, and in and about the defence of himself in the said suit so brought against him by the said A. W. and is liable to make satisfaction to the said A. W. for certain damages, costs, and charges by him sustained on occasion of the committing the said assault and false imprisonment upon the said A. W. And whereas, &c. (Money laid out, &c.): Yet the said William in his lifetime, and the said Thomas and James executors as aforesaid since the death of the said William, not regarding the aforesaid two several promises and undertakings last-mentioned, but contriving, &c. the said Frederick in this behalf, have not, nor have any, nor hath either of them, yet paid the said two last-mentioned several sums of money, or any part thereof, to the said Frederick (although so to do, &c.); but they to do the same have, and each and every of them hath, hitherto wholly refused, and the said Thomas and James still refuse, and each of them still refuses, to the said Frederick his damage of one hundred pounds, &c. &c.

DEVONSHIRE,

DEVONSHIRE, *ff.* Margeret Cox v. John Scobel, gent. one of, &c. For that whereas before the time of the promise and undertaking of the said J. hereafter next mentioned, one Thomas Cox deceased, who during his lifetime was husband of the said M. was, at the time of his death, lawfully possessed and entitled unto considerable personal estate and effects, part and parcel whereof, amounting to a much greater sum than the sum of five pounds, that is to say, to the sum of two hundred pounds, was, at the time of the death of the said J. and of the promise and undertaking of the said J. within the diocese of the bishop of London, and other part and parcel of the said personal estate and effects, amounting to a much greater sum than the sum of five pounds, that is to say, to the amount of one hundred and fifty pounds, was at the said several times within the diocese of the bishop of Exeter; and being so possessed thereof, the said J. made his will and testament in writing, and thereby constituted and appointed the said M. executrix of that his said will and testament, and afterwards died without revoking the same; of all which premises the said J. had notice, that is to say, at, &c. in, &c.: whereupon the said J. afterwards, to wit, on, &c. in, &c. in consideration that the said M. at the special instance and request of the said J. would retain and employ the said J. as the agent or proctor of her the said M. to procure the said will and testament of the said J. to be proved in the court of the archdeacon of the archdeaconry of Totness in the said county of Devon and diocese of the bishop of Exeter, and obtain for her the said M. a probate from the said court of the said will and testament (1), for certain reasonable hire or reward to be therefore paid by the said M. to the said J. undertook, and then and there faithfully promised the said M. that (2) the said court of the archdeacon of the archdeaconry of Totness had sufficient power and authority to grant a probate of the said will and testament, and that she the said M. by means of such probate, would be authorized and enabled to (3) sue for, recover, and receive the aforesaid goods and effects and personal estate of the said J. so as aforesaid, being in the said several dioceses: And the said M. in fact says, that she, confiding in the (4) aforesaid promise and undertaking of the said J. did employ him as her agent or proctor to (5) prove the said will and testament in the said court of the said archdeacon, and to procure a probate thereof from the said court; and did afterwards, to wit, on, &c. pay to the said J. a large sum of money, to wit, the sum of seven pounds for proving the said will and testament in the said court of the said archdeacon, and procuring a probate thereof from the said court, that is to say, at, &c. in, &c.: And the said M. further saith, that although the said J. did (6) prove the said will and testament in the court of the said archdeacon, and (7) procure from the said court a probate thereof (8): Yet the said J. (6) "afterwards, to wit, on, &c." (7) "did" (8) "and that she the said M. did then and there pay to the said J. a large sum of money, to wit, the sum of seven pounds, as reward for the said J. proving the said will as aforesaid, and procuring the said probate."

Plaintiff was executrix of the will of her husband, and the employed defendant as her proctor and agent to get a probate of the will; defendant got a probate, but in the court of the bishop of Exeter instead of the prerogative court of the archbishop of C. whereby plaintiff was put to a great expence in having the will transmitted, &c. &c.

(1) "of the said T."

(2) "he would cause the said will and testament aforesaid to be duly proved in the proper ecclesiastical court, and obtain therefrom for the said M."

(3) "which should be valid and sufficient in law to enable the said M."

(4) "said last-mentioned"

(5) "procure a probate for her the said M. of the said will and testament,"

contriving,

contriving, &c. the said M. in this respect, did not regard the said promise and undertaking, but thereby deceived the said M. in this; that the said court of the archdeacon of the archdeaconry of Totness had not any power and authority to grant any probate of the said will and testament of the said J. and the said probate so as aforesaid procured by the said J. was void in law, and the said M. was not by means thereof authorized and enabled to sue for, recover, and receive any of the goods, chattels, and personal estate which were of the said J. at the time of his death, and so as aforesaid in the said several dioceses; and by means thereof the the said M. was forced and obliged to lay out and expend a large sum of money, to wit, the sum of twelve pounds in procuring the said will and testament to be transmitted from the said court of the said archdeacon to the prerogative court of the archbishop of Canterbury, within whose province the said two dioceses be, in order that the might duly prove the said will and testament in the said prerogative court, and obtain therefrom a probate thereof; that is to say, at, &c. And whereas, &c. &c. (2d Count like the 1st; omitting what is in *Italic*; and inserting what is in margin: Money paid, &c. &c. &c.)

Declaration in case in *assumpsit* against an attorney at suit of plaintiff who had employed the defendant to sue one A. B. for not attaching the sheriff for not bringing in the body of A. B. after ruling him, and for not taking assignment of bail-bond when it became assignable, but proceeding to judgment, whereby the plaintiff lost his debt and costs.

MIDDLESEX, to wit. N. P. v. T. A. gent. one; &c. For that whereas one C. A. T. before the making of the promise and undertaking of the said defendant hereinafter next mentioned, to wit; on, &c. at, &c. in, &c. made her certain note in writing; commonly called a promissory note; her own proper hand being, &c. &c. (as in a common declaration on a promissory note with indorsements): and being so liable, he the said plaintiff; for the recovery and payment of the said sum of money in the said note specified; heretofore, to wit, on, &c. at, &c. in, &c. retained and employed the said defendant (he the said defendant then and still being one of the attorneys of the court of our said lord the king, before the king himself here) as the attorney of and for him the said plaintiff, to commence and prosecute an action at the suit of him the said plaintiff against the said C. K. (one of the indorsers); and to cause the said C. K. to be arrested and held to special bail in such action, and to use all due and proper means in and about the commencement and prosecution thereof, and otherwise for the recovery and obtaining payment of the said sum of money in the said note contained; and in consideration thereof, and also in consideration of a reasonable hire, reward, and compensation to be paid by the said plaintiff to the said defendant for his fees, attendances, work, labour, and expences in that behalf, he the said defendant then and there, to wit, on, &c. at, &c. in, &c. undertook, and faithfully promised the said plaintiff well and truly to perform, fulfil, and execute the business and duty of such attorney in that behalf as aforesaid: And the said plaintiff in fact saith, that the said defendant, as such attorney as aforesaid, did afterwards, to wit, in Hilary vacation, in the twenty-sixth year of the reign of our said lord the

now

now king, before the king himself here (the said court then and still being held at Westminster, in the said county of Middlesex), commence an action at the suit of the said plaintiff against the said C. K. for the recovery and obtaining payment of the said sum of money in the said first note specified; and that after the commencement of such action, the said C. K. was arrested therein by the then sheriff of the said county of Middlesex, under and by virtue of a certain precept called a *pluries* bill of Middlesex, before then issued out of the said court of our said lord the now king, before the king himself; whereby the said sheriff was commanded, as oftentimes before he had been commanded, to take the said C. K. if he might be found in the bailiwick of the said sheriff, and that he should keep him safely, so that the said sheriff might have his body before the said lord the king at Westminster on Friday next after the morrow of the Holy Trinity, to answer to the said plaintiff in a plea of trespass, and also to a bill of the said plaintiff against the said C. K. for one hundred and forty pounds, upon promises, according to the custom of the court of the said lord the king, before the king himself to be exhibited; and that the said sheriff should then have there that precept; which said precept was duly indorsed for bail for seventy pounds and upwards, by virtue of an affidavit of the cause of action before then made and duly assised in the said court of our said lord the king before the king himself, according to the form of the statute in such case made and provided: *And the said plaintiff in fact further saith, that the said C. K. being so arrested, afterwards, and before the return of the said precept, gave bail to the said sheriff, and that such bail entered into a bail-bond for the appearance of the said C. K. before our said lord the king at Westminster aforesaid, at the return of the said precept, to answer to the said plaintiff to the bill aforesaid, according to the form of the statute in that case made and provided; but the said C. K. did not appear before the said lord the king at Westminster aforesaid, at the return of the said precept, to answer to the said plaintiff in the plea and to the bill aforesaid, according to the rules and practice of the said court of our said lord the king, before the king himself, but wholly refused, neglected, and omitted so to do; and that thereupon it was the business and duty of the said defendant, as such attorney as aforesaid, to have taken an assignment of the bail-bond so as aforesaid entered into for the appearance of the said C. K. at the return of the said precept, and to have proceeded thereon against the bail to the said sheriff, according to the rules and practice of the said court, to wit, at Westminster aforesaid, in the county aforesaid: And the said plaintiff in fact saith, that at the return of the said precept, to wit, on Friday next after the morrow of the Holy Trinity, in the twenty-sixth year aforesaid, the said defendant, as such attorney as aforesaid, did apply for and obtain a rule of the said court of our said lord the king, before the king himself, whereby it was ordered, that the said sheriff should, within four days next after notice of that rule, to be given to his under-sheriff, peremptorily return the *pluries* bill of Middlesex aforesaid, and that the said sheriff did afterwards, and*

within

within the time specified in the said rule, and in obedience thereto; return upon the said precept to the said court of our said lord the king, before the king himself, that he had taken the said C. K. whose body he had ready, as by the said precept he was commanded; and that the said defendant, as such attorney, did thereupon afterwards, to wit, on Wednesday next after the octave of the Holy Trinity, in Trinity term aforesaid, apply for and obtain another rule of the same court, whereby it was ordered, that the said sheriff should, within four days next after the notice of that rule to be given to his under-sheriff, peremptorily bring into court the body of the said C. K.; and that the said defendant, as such attorney, did afterwards, to wit, on the same Wednesday next after the octave of the Holy Trinity aforesaid, give due notice of the said last-mentioned rule to the under-sheriff of the said county of Middlesex, according to the tenor and effect thereof, to wit, at, &c. in, &c. but that the said sheriff did not, at any time within four days next after notice of the said last-mentioned rule so given as aforesaid to the said under-sheriff as aforesaid, peremptorily or otherwise bring into court the body of the said C. K. nor perfect special bail in the said action, but wholly neglected, omitted, and refused so to do, nor was any such bail as last aforesaid perfected at any time before, within, or at the expiration of the said last-men-

(In ad Count insert,)

(1) "whereupon, and by means of the several premises last aforesaid, it was the business and duty of the said defendant, as such attorney as aforesaid, to have applied for and endeavoured to have obtained from the said court of our said lord the king, before the king himself, a writ of attachment against the said sheriff for his disobedience to the said last-mentioned rule; and although he the said defendant, as such attorney as aforesaid, in case he had applied as aforesaid, could and ought to have obtained from the said court such writ of attachment as last aforesaid,"

(2) "endeavouring to"

(3) "without applying for or endeavouring to obtain"

time

ASSUMPSIT SPECIAL.—BY AND AGAINST ATTORNIES.

59

Time hitherto taken an assignment of the bail-bond aforesaid, but hath hitherto wholly refused, neglected, and omitted so to do; by means of which said several premises, he the said defendant, as such attorney as aforesaid, hath given up and relinquished all claims and demands upon the said sheriff, which the said plaintiff might could and ought to have had for such his the sheriff's disobedience to the said last-mentioned rule; by means whereof the said plaintiff hath not only been delayed and deprived of the means, benefit, and opportunity of recovering and obtaining payment from the said sheriff of the said sum of money in the said note specified, (which is still wholly unpaid and unsatisfied,) and is still likely to lose the same; but also thereby he the said plaintiff hath necessarily laid out and expended a large sum of money, to wit, the sum of twenty pounds, of, &c. for his costs and charges in and about the commencement and prosecution of the said action, and hath been and is otherwise greatly injured and damnified, to wit, at, &c. And whereas, &c. &c. (2d Count same as the 1st, only omitting what is in Italics, and inserting what is in margin. Damage two hundred pounds.)

W. BALDWIN:

LANCASHIRE, to wit: J. M. esquire, complains of John Hartley, gent. one of the attornies of the court of our lord the king, before the king himself, present here in court in his own person, in a plea of trespass on the case: for that whereas heretofore, to wit, on, &c. at, &c. in consideration that the said J. H. had before that time had and received divers large sums of money for the use of the said J. M.; and also in consideration that the said J. M. at the special instance and request of the said J. H. would accept and take of him the said J. H. and endeavour to procure payment, and when paid would accept the value in part payment; and on account of the said several sums so had and received as aforesaid, two several notes in writing, commonly called money post bills, bearing date respectively the twenty-sixth day of, &c. and the sixth day of, &c. A. D. 1787, made and signed respectively by one W. H. by each of which said bills he the said W. H. promised to pay that his bill of exchange to one E. P. in the said bill mentioned, by the name of Mr. E. P. or bearer, five guineas sterling, twenty-one days sight, at No. 16, Cheapside, London, value received, for certain persons in the said several bills, called Livesey and Co. he the said J. H. undertook, and then and there faithfully promised the said J. M. if the said several bills or either of them should not be paid; when the same respectively should become payable, according to the tenor and effect thereof respectively; that he the said J. H. would pay to the said J. M. the amount or value of such of the said bills as should not be paid, whenever he the said J. H. should be thereunto requested: And the said J. M. in fact says, that he, confiding in the said promise and undertaking of the said J. H. afterwards, to wit, on, &c. at, &c. at the special instance and request of the said J. H. did accept and take the said bills

Declaration in assumpsit against the attorney of the purchaser of plaintiff's estate, who had received the money from his client to pay over, in consideration that the plaintiff would accept on account two post bills, payable to bearer, and endeavour to get them paid, defendant undertook to take them again, and pay the value for them if they were not paid when due.

(a) 2d Count, in consideration that he had so taken them, and that they were returned for non-payment, if he would forbear to sue defendant for a reasonable time, he undertook to pay the same with interest.

on the terms and conditions aforesaid; and that afterwards, and within a reasonable time after the receipt thereof, to wit, on, &c. he the said J. M. caused the said several bills and each of them to be duly seen at No. 16, Cheapside, London, according to the tenor and effect thereof, and that the said several bills were, and each of them was thereupon accepted to be paid, according to the tenor and effect thereof, to wit, at, &c. in, &c.: And the said J. M. in fact further says, that afterwards, and at the expiration of the time when the said bills became payable, according to the tenor and effect thereof respectively, to wit, on, &c. the said several bills were, and each of them was, duly shewn and presented at No. 16, Cheapside, London, aforesaid, for payment thereof, according to the tenor and effect thereof, and of such sight and acceptance thereof respectively as aforesaid, but that payment of the said several bills, and each of them, was then and there refused, to wit, at, &c.; of all which said premises the said J. H. afterwards, to wit, on, &c. had notice; and by reason thereof, and according to his said promise and undertaking, he the said J. H. became liable to pay to the said J. M. the amount in value of the said several bills, amounting in the whole to a large sum of money, to wit, the sum of ten pounds ten shillings of like lawful money, when the said J. H. should be thereto afterwards requested. And whereas heretofore, to wit, on, &c. at, &c. the said J. M. at the like special instance and request of the said J. H. had then and there accepted and taken of the said J. H. two other notes in writing, commonly called money post bills, dated respectively the twenty-sixth day of, &c. made and signed respectively by one W. H. whereby, and by each of which said several bills, the said W. H. promised to pay to one E. P. in the said bill respectively mentioned by the name and description of, &c. for certain persons in the said several bills called Liveley and Co.; and he the said J. M. had then and there, to wit, on, &c. at, &c. agreed to endeavour to receive the money due upon the same when the same should respectively become payable, according to the tenor and effect of the said several bills; and if the same should be paid to him, to accept the same in full satisfaction and discharge of so much money before that time had and received by the said J. H. to the use of the said J. M. on consideration that if the same bills, or either of them, should not be so paid to the said J. M. when the same respectively became due and payable, according to the tenor and effect thereof, that then he the said J. H. would take them up again and pay to the said J. M. the money therein contained, whenever afterwards he the said J. H. should be thereunto requested; in consideration of which said several premises, and also in consideration that the said J. M. had accordingly caused the said several bills, and each of them, to be duly shewn and presented for sight, acceptance, and payment, according to the tenor and effect thereof respectively; and that payment thereof, and of each of them, according to the tenor and effect thereof, had been refused, and due notice had been given to the said J. H. and immediate payment of the said several bills re-

(a) See Assumpsit in Consideration of Forbearance, post.

quired of him, according to his said promise and undertaking, to wit, on, &c. at, &c. he the said J. H. undertook, &c. the said J. M. that if the said J. M. would not insist upon immediate payment of the said several sums of money in the said several bills contained, but would forbear to sue, and give day of payment for the same for a reasonable time further, he the said J. H. would pay to the said J. M. the amount of the said several sums of money in the said bills contained, with lawful interest for the same, from the time that the same were so refused payment, according to the tenor and effect thereof, till the same should be paid by the said J. H. : And the said J. M. in fact says, that he, confiding in the said promise and undertaking of the said J. H. so by him made as last aforesaid, afterwards, to wit, on, &c. at, &c. did forbear to sue, and did give day of payment for the said several sums of money in the said several bills mentioned for a reasonable time, to wit, from thenceforth to the time of exhibiting this bill, and that a large sum of money, to wit, the sum of twelve pounds of like lawful money, hath become due and payable from the said J. H. to the said J. M. for principal and interest upon the said several sums of money in the said bills contained; of which he the said J. H. hath had due notice, to wit, at, &c. (Add the common money Counts; an account stated; and common conclusion.) T. BARROW.

MEMORANDUM.—Defendant pleaded the “General issue:” Verdict for plaintiff.

Stormont and Way.

Easter Term, 25. Geo. 3. (Roll.)

CHIPPINDALL
against

MIDDLESEX, to
wit. Be it remem-

Declaration by
an attorney a-
gainst executors,
for business
done.

TOMLINSON AND ANOTHER EXECUTOR. }
that is to say, in Michaelmas term, in the twenty-third year of
the reign of our sovereign lord George the Third, now king of
Great Britain, and before our said lord the king at Westminster,
came Joseph Chippindall, gent. by William Lyon his attorney,
and brought into the court of our said lord the king then and there
his bill against James Tomlinson and Francis Harding, executors
of the last will and testament of Francis Tomlinson, deceased, be-
ing in the custody of the marshal of the marshalsea of the lord the
king, before the king himself, of a plea of trespass on the case;
and there are pledges for the prosecution, to wit, J. D. and R. R.;
which said bill follows in these words, to wit: Middlesex, to wit.
Joseph Chippindall, gent. complains of James Tomlinson and
Francis Harding, executors of the last will and testament of
Francis Tomlinson, deceased, being in the custody of the marshal,
&c. : For this, to wit, that whereas the said Francis Tomlinson,
in his lifetime, to wit, on the first day of April A. D. 1781, at
Westminster, in the county of Middlesex, was indebted to the
said plaintiff in the sum of one hundred pounds of lawful money
of Great Britain, for money by said plaintiff before that time laid

out, expended, and paid, as the attorney and solicitor of said F. T. and upon his retainer, in the prosecuting and defending divers suits in equity in this court here, and other his majesty's courts of record at Westminster; and for his fees, labour, care, and diligence in prosecuting and defending the same; and for work and labour, care and diligence of said plaintiff, by said plaintiff before that time done and performed, in drawing, writing, and engrossing divers writings, making divers journeys, and giving his attendance in and about the same, and other the business of the said F. T. in his lifetime, at the special instance and request of the said F. T. and on his retainer: And being so indebted to the said F. T. in his lifetime, in consideration thereof, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, undertook, &c. to pay him the said sum of money when he said defendant should be thereto afterwards requested. And whereas said Francis Tomlinson, in his lifetime, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in consideration that said plaintiff, at the like special instance, &c. of said F. T. upon his retainer, had before that time, as the attorney and solicitor of the said F. T. prosecuted and defended divers other suits in law and equity in this court here, and divers other his majesty's courts of record at Westminster; and had, at the like special instance, &c. of said F. T. in his lifetime, before that time done and performed and bestowed other his work and labour, care and diligence, in drawing, writing, and engrossing divers other writings, making divers other journeys, and giving other his attendance in and about the same, and other the business of said F. T. he said F. T. in his lifetime undertook, &c. to pay him so much money as he said plaintiff had laid out, expended, and paid in and about the prosecution and defence of those several causes and suits, and in doing and transacting the said other business and affairs, as he the said plaintiff reasonably deserved to have, when he should be thereto afterwards requested: And said plaintiff avers, that he, in and about the premises, had laid out and expended other one hundred pounds, to wit, at Westminster aforesaid, in said county; whereof the said Francis Tomlinson, in his lifetime, then and there had notice. And whereas, &c. (two Counts more for work and labour generally; 5th Count, for money laid out, &c.; 6th, money had and received; and 7th, an account stated; with common conclusion to a declaration against executors.) And now at this day, that is to say, on Tuesday next after fifteen days from the day of Easter in this same term, until which day the said James and Francis had leave to imparl to the said bill, and then to answer the same, as well the said plaintiff by his said attorney as said defendants by John Parker their attorney, do come before our lord the king at Westminster; and said defendants defend the wrong and injury when, &c. and say, that said F. T. in his lifetime did not undertake and promise in manner and form as said plaintiff hath above thereof complained against them, and of this they put themselves upon the country: And said defendants for further plea in

Imparance.

Plea against general issue.

bar in this behalf, by leave, &c. say, that said plaintiff *assio non*, because they say, that said plaintiff and one Nathaniel Milne, before the making of said promises and undertakings in the said declaration above supposed to have been made by said F. T. in his lifetime, and until the time when the same are supposed to have been made, and from thence continually until the suing forth of the commission of bankruptcy hereafter mentioned against said plaintiff and Nathaniel Milne, did use the said trade and profession of scriveners, receiving other men's monies and estates in their trust and custody, to wit, at Westminster, &c. aforesaid; and the said plaintiff and Nathaniel Milne so using and exercising the said trade or profession, and receiving other men's monies and estates into their trust and custody as aforesaid, they the said plaintiff and N. M. afterwards, to wit, on the first day of October A. D. 1775, at Westminster aforesaid, were indebted to one James Morton in the sum of one hundred pounds and upwards of lawful, &c. for a just and true debt; and being so indebted, and so using and exercising the said trade or profession, and receiving men's monies and estates in their trust and custody as aforesaid, afterwards, to wit, on the tenth day of October 1775, at Westminster aforesaid, they the said plaintiff and N. M. became bankrupts, within the true intent and meaning of the several statutes made and then in force concerning bankrupts; and said plaintiff and N. M. being and continuing bankrupts, afterwards, to wit, on the eleventh day of October in the year last aforesaid, on the petition of the said J. M. who was then a creditor of said plaintiff and N. M. as aforesaid, as well for himself as all others the creditors of the said plaintiff, and N. M. made and exhibited in writing to the right honourable earl Bathurst, then lord high chancellor of Great Britain, a certain commission of our lord the now king, sealed with the great seal of Great Britain (and to the court of our lord the king now here shewn, the date whereof is the same day and year last aforesaid), in due manner issued out of his majesty's high court of chancery (the said Court then being holden at Westminster, in said county of Middlesex), directed to John Aspinall, Joseph Clowe, esquire, and John Ridgway, John Kay and Thomas Jones, gent. against the said Joseph Chippindall and N. M. whereby our said lord the king did name, appoint, assign, constitute, and ordain the said J. A. J. C. J. R. J. K. and T. J. his special commissioners; thereby giving full power and authority unto them, four, or three of them, whereof the said J. A. or J. C. to be one, to proceed according to the statutes then in force concerning bankrupts; not only concerning the said bankrupts, their bodies, land, tenements, freeholds, and customary goods, debts, and other things whatsoever, but also concerning all other persons who, by concealment, claim, or otherwise, did or should offend touching the premises, or any part thereof, contrary to the true intent and meaning of the said statutes; and to do and execute all and every thing and things whatsoever, as well for and towards satisfaction and payment of said creditors as towards and for all other intents and purposes, according to the ordinance and pro-

2d, Bankruptcy in plaintiff and his co partner, with all the proceedings under the commission set out.

N. B. That the proof that the plaintiff was bankrupt at the time of the work done would be sufficient to non-suit him.

Bull. Nl. Pri.

155. Trading.

Petitioning creditor's debt: 100.

Bankruptcy.

Petition.

Commission issued.

vision of the same statutes, willing and commanding them, four, or three of them, whereof the said J. A. or J. C. to be one, to proceed to the execution and accomplishment of that his majesty's commission, according to the true intent and meaning of the same statute, with all diligence and effect, as by the said commission appears; by virtue of which said commission, and by force of the said several statutes the said J. C. J. R. and J. K. three of the said commissioners named in the said commission, afterwards, to wit, on the seventeenth day of October in the said year of Our Lord 1774, at Westminster, &c. aforesaid, did in due form of law adjudge and declare said plaintiff and N. M. bankrupts, within the true intent and meaning of the statutes made and then in force concerning bankrupts, some or one of them, to wit, at Westminster, &c. aforesaid: And said defendants further say, that afterwards, to wit, on the twenty-fourth day of October A. D. 1775, at Westminster aforesaid, due notice was given and published in the London Gazette, that a commission of bankruptcy was awarded and issued forth against said plaintiff and N. M. and that they were declared bankrupts, to wit, at Westminster aforesaid: And said defendants further say, that the said J. C. J. R. and J. K. three of the said commissioners named in the said commission, afterwards, and before the day of exhibiting the bill of said plaintiff, to wit, on the eighteenth day of October in the year last aforesaid, at Westminster aforesaid, in the county aforesaid, by a certain indenture then and there made between the said J. C. J. R. and J. K. three of the said commissioners named in the said commission of the one part, and the said J. M. of the other part (one part of which said indenture, sealed with the seals of J. C. J. R. and J. K. the said defendants now bring here into court the same day and year last aforesaid), did order and bargain, sell, dispose, assign, and set over unto the said J. M. his executors, administrators, and assigns, all and singular the goods, chattels, debts, sum and sums of money, household stuffs, furniture, plate, and all implements of household, and all other personal estates whatsoever of them said plaintiff and N. M. of which they or either of them were or was possessed or entitled unto, or which any other person or persons was or were possessed, in trust for them, at the time they became bankrupts; to have and to hold all and singular the said premises thereby assigned or made, or intended so to be, unto the said J. M. his executors, administrators, and assigns, in trust for the immediate preservation thereof, and to and for the use, benefit, and advantage of all the creditors of said plaintiff and N. M. who had then already sought, or should thereafter come in and seek relief by virtue of said commission, according to the directions and limitations of the several statutes in that case made and provided, as by said indenture more fully appears: And said defendants further say, that afterwards, and before the day of exhibiting of the bill of said plaintiff, to wit, on the fifteenth of November in the year last aforesaid, at Westminster, &c. aforesaid, by a certain other indenture then and there made between the said

J. M.

J. M. of the first part, the said J. C. J. R. and J. K. the major part of the commissioners in the said commission named of the second part, and Edward Hudson of the third part, one part of which said last-mentioned indenture, then and there sealed with the seals of said J. M. J. C. J. R. J. K. and E. H. the said defendants now bring here into court, the date whereof is the same day and year last aforesaid, the said J. M. by the direction of said commissioners, parties to the said last-mentioned indenture, did bargain, sell, assign, transfer, and set over; and the said commissioners, parties thereto, did order, assign, ratify, and confirm unto said Edward Hudson, his executors, administrators, and assigns, all and singular the said goods, cattle, chattels, debts, sum and sums of money, household stuff and furniture, plate, implements of household, and other personal estate whatsoever, of said plaintiff and N. M. which they or either of them were or was possessed of or entitled unto, or which any other person or persons were or was possessed of, in trust for them or either of them, at the time they became bankrupts, or at any time since, herein before-mentioned to have been assigned to the said James Morton, his executors, administrators, and assigns; to have and to hold all and every the said goods, cattle, chattels, debts, sum and sums of money, personal estate and effects, and all other the premises mentioned to be thereby ordered, bargained, sold, assigned, and set over, and every part and parcel thereof, with the appurtenances, unto said E. H. his executors, administrators, and assigns, in trust to the intent and purpose that the said E. H. his executors, &c. should assign and transfer the same unto one Arnold Birch, the said J. M. and one Joseph Harrop, therein named, or unto such person or persons, at such time and in such manner and form, as the said commissioners in and by the said commission named and authorized, or the major part of them, or the commissioners to be named in any renewed commission of bankrupt against said plaintiff and N. M. or the major part of them, to be thereby authorized, should direct, order, and appoint, as by the said last-mentioned indenture it more fully appears. And said defendants further say, that afterwards, and before the day of exhibiting of said bill of said plaintiff, to wit, on the sixteenth day of November in the year last aforesaid, at Westminster aforesaid, by a certain other indenture then and there made between the said E. H. of the first part, the said J. C. J. R. and J. K. the major part of the said commissioners in the said commission named, of the second part, and J. B. J. M. and J. H. of the third part, one part of which said last-mentioned indenture, sealed with the seals of E. H. J. C. J. R. and J. K. the said defendants now bring here into court, the date whereof is the same day and year last aforesaid, the said E. H. at the special instance and request, and by the particular order and directions of the said commissioners, parties there to did bargain, sell, assign, transfer, and set over, and the said commissioners, parties thereto, did order, bargain, sell, assign, ratify, and confirm unto the said A. B. J. M. and J. H. their executors, administrators, and assigns, all and singular the said goods,

Ultimate assign-
ment to assign-
ees.

ASSUMPSIT SPECIAL,—BY AND AGAINST ATTORNIES.

goods, cattle, chattels, debts, sum and sums of money, household-stuff and furniture, plate, and all implements of household and personal estate whatsoever or wheresoever, of or belonging to said plaintiff and N. M. as well as all the respective separate effects whatsoever of the said bankrupts; to have and to hold the said goods, cattle, chattels, debts, sum and sums of money, household stuff and furniture, plate, implements of household and other things, and all the estate and effects whatsoever, thereby ordered, bargained, sold, assigned, and set over, or mentioned so to be, unto the said A. B. J. M. and J. H. their executors, administrators, and assigns, upon trust: nevertheless to and for the use, benefit, and advantage of themselves and all and every other the creditors of the said plaintiff and N. M. as well joint as separate, according to their respective rights and interests therein and thereto, who had then already or should thereafter come in to seek relief by virtue of the said commission, according to the directions and limitations of the several statutes in that case made and provided, as by the said last-mentioned indenture more fully appears. And the said defendants further say, that the said commission still remains in its full force and effect; and this the said defendants are ready to verify: wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them,

FOSTER BOWER.

Replication.
1st, *Nol. prof.* to
5th, 6th, and
7th Counts.

1st, Issue as to
1st, 2d, 3d, and
4th Counts.

Replication to
plea of bank-
ruptcy of plain-
tiff, that cause
of action accru-
ed after the as-
signment for the
necessary sup-
port of plaintiff
and his family.

And said plaintiff, as to the 5th, 6th, 7th, and last Counts of his said declaration, freely acknowledged here in court that he will not further prosecute against the said defendants as to the said several promises and undertakings in those Counts mentioned; therefore let the said defendants go quit thereof, &c. And as to the said plea of said defendants, by them first above pleaded, whereof they have put themselves upon the country, the said plaintiff as to the said 1st, 2d, 3d, and 4th promises and undertakings in the said declaration mentioned doth so likewise. And said plaintiff, as to the said plea of the said defendants by them lastly above pleaded in bar, saith, that he ought not, by reason of any thing by them in that plea above alledged, to be barred from having and maintaining his aforesaid action thereof against them as to the 1st, 2d, 3d, and 4th promises and undertakings in the said declaration mentioned, because he saith, that the said several suits in the 1st and 2d Counts of said declaration mentioned were prosecuted and defended, and the said work and labour, care and diligence of him said plaintiff, in the 1st, 2d, 3d, and 4th Counts of his said declaration mentioned, were done, performed, and bestowed by him said plaintiff after the issuing the said commission, and also after the making of the said several assignments in the said last plea of said defendants above-mentioned, for the necessary maintenance, support, and livelihood of him said plaintiff and his family, to wit, at, &c. aforesaid; and this he is ready to verify: wherefore he prays judgment, and his damage by him sustained by reason of the promises, to be adjudged to him, &c.

A. CHAMBER.

And said defendants as to the said pleas of the said plaintiff by him above in reply pleaded to the said plea of the defendants lastly above pleaded in bar, say, that said plaintiff, by reason of any thing by him in his said replication alledged, ought not to have or maintain his aforesaid action thereof against them as to the 1st, 2d, 3d, and 4th promise and undertaking in said declaration mentioned, because they say, that no certificate by which the said commissioners authorized by the said commission, or the major part of them, have, in writing under their hands and seals, certified to the said chancellor or lord keeper or commissioners for the custody of the great seal of Great Britain for the time being, that the said plaintiff hath made a full discovery of his estate and effects, and in all things conformed himself according to the directions of a certain act of parliament made at Westminster, in the county of Middlesex, in the fifth year of the reign of the lord George the Second, late king of Great Britain, intituled, "An Act to prevent the committing of Crimes and Frauds by Bankrupts;" and that there did not appear to them any reason of the truth of such discovery of all said plaintiff's effects, hath at any time before the exhibition of the bill of the said plaintiff been allowed and confirmed by the lord chancellor, lord keeper, or commissioners for the custody of the great seal of Great Britain for the time being, or by any two of the justices of the court of king's bench, common pleas, or barons of the court of exchequer, at or to where the consideration of such certificate hath been referred by the lord chancellor, lord keeper, or commissioners for the custody of the great seal for the time being; and this they are ready to verify: wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action as to the 1st, 2d, 3d, and 4th promises and undertakings in the said declaration mentioned against them, &c.

Rejoinder, that plaintiff hath not obtained his certificate.

FOSTER BOWER.

And said plaintiff as to said plea of said defendants by themselves above pleaded by way of rejoinder to said plea of said plaintiff by him above pleaded by way of reply to said plea of said defendants by them lastly above pleaded in bar, saith, that that plea so pleaded by way of rejoinder, and the matter therein contained, are not sufficient in law to bar said plaintiff from having and maintaining his aforesaid action thereof against them, as to said 1st, 2d, 3d, and 4th promises and undertakings in the said declaration mentioned; to which said plea so pleaded by way of rejoinder, in manner and form as the same is above pleaded, the said plaintiff hath no necessity, nor is he bound by the law of the realm, to answer; and this he is ready to verify: wherefore, for want of a sufficient rejoinder in this behalf, the said plaintiff prays judgment, and his damages by him sustained by reason of the premises, to be adjudged to him, &c.

General demurrer thereon.

And said defendants say, that the said plea of them said defendants in manner and form by them said defendants above pleaded by way of rejoinder to said plea of said plaintiff by him above pleaded

Joinder in demurrer.

ed

*Cur. ad. vult.**Dies datus.**Veritas.*

ed by way of reply to said plea of them said defendants by them lastly above pleaded in bar, and the matters therein contained, are sufficient in law to bar said plaintiff from having and maintaining his said action thereof against them as to the said 1st, 2d, 3d, and 4th promises and undertakings in said declaration mentioned; which said plea so pleaded by way of rejoinder, and the matter in the same contained, they the said defendants are ready to verify and prove as the court shall award; and because the said plaintiff hath not answered the said rejoinder, nor hitherto in any manner denied the same, they the said defendants as before pray judgment, and that the said plaintiff may be barred from having his aforesaid action thereof against them, &c. : But because the court of our lord the king, before the king himself now here, will advise amongst themselves what judgment to give in the premises, whereon the said parties have put themselves upon the judgment of the court here, before they give judgment thereon; a day is therefore given to the parties aforesaid to come before our lord the king at Westminster, on _____ next after _____, to hear judgment thereon; because the court of our said lord the king now here is not yet fully advised thereof. And as well to try the said issue above joined to be tried by the country as to enquire what damages the said plaintiff hath sustained on occasion of the premises, whereof the said parties have put themselves upon the judgment of the court, in case judgment shall be thereupon given for the said plaintiff, let a jury come before our lord the king at Westminster, on _____ next _____, by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. the same day is given to the said parties there, &c.

N. B. This demurrer was argued, and the Court divided in favour of the plaintiff Chippindall, that he was entitled to the benefit of what he might obtain

after his bankruptcy and before obtaining his certificate, for the necessary support of himself and family.

Assumpsit on a promise by defendant to see plaintiff paid for business done for another as a solicitor and attorney. Counts for work and labour; quantum meruit. *Indelictatus assumpsit* for money paid to the use of M. at defendant's request; money had and received by defendant to the use of plaintiff; and on

MIDDLESEX, *vs.* Andrew Evans, gentleman, &c. complains of John Ripshaw, being, &c. : for that whereas, on the first of May A. D. 1787, at W. in the said county of Middlesex, in consideration that the said Andrew, then and still being an attorney and solicitor, at the special instance and request of the said John, would, as such attorney and solicitor, at the special instance and request of the said John, do and transact certain business on behalf of one A. Murfey, he the said John, by a certain note or memorandum then and there signed and subscribed by him, undertook, and faithfully promised the said Andrew that he the said John would see the said Andrew paid for the doing thereof; And the said Andrew says, that he, confiding in the said promise and undertaking of the said John, did, after the making thereof, to wit, on the day and year aforesaid, and on divers other days between the day of _____ in the year 178 _____, at W. aforesaid, do and transact such the balance of an account.

business

business as aforesaid on the behalf of the said A. Murfey, and that there was then and there justly due to him the said Andrew for the doing of such business a certain large sum of money, to wit, the sum of of lawful money of Great Britain. no part whereof hath been paid or discharged by the said A. Murfey; of all which said premises the said John afterwards, to wit, on the day and year last aforesaid, at W. aforesaid, had notice. And whereas the said John afterwards, to wit, on the day and year last aforesaid, at W. aforesaid, was indebted to the said Andrew in the further sum of of like lawful money, for work, labour, and attendance by the said Andrew as an attorney and solicitor before then done, performed, and given in and about the prosecuting and defending of divers suits and prosecutions on the behalf of the said A. Murfey, at the special instance and request of the said John, and on his retainer for fees due and of right payable to the said Andrew in that respect; and being so indebted, he the said John, in consideration thereof, afterwards, on the day and year last aforesaid, at W. aforesaid, undertook and faithfully promised the said Andrew to pay him the said last-mentioned sum of money when he the said John should be thereto afterwards requested. And whereas afterwards, to wit, on the day and year last aforesaid, at W. aforesaid, in consideration that the said Andrew, at the like instance and request of the said John, and on his retainer, had before that time done, performed, and given certain other work, labour, and attendance as an attorney and solicitor in and about the prosecuting and defending divers other suits and prosecutions on the behalf of the said A. Murfey, he the said John then and there undertook and faithfully promised the said Andrew to pay him so much money as he reasonable deserved to have for the same, and for his fees in that respect, when he the said John should be thereunto afterwards requested: And the said Andrew says, that he therefore reasonably deserved to have of the said John pounds of like lawful money, to wit, at W. aforesaid; whereof the said John afterwards, to wit, on the day and year last aforesaid, there had notice. (*Indebitatus assumpsit* for money paid to the use of A. Murfey at defendant's request; for money had and received by defendant to the use of plaintiff; for money due on the balance of an account.) Yet the said John, not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Andrew in this behalf, hath not paid or seen the said Andrew paid the said sum of pounds in the first Count of this declaration mentioned, neither hath he paid him the said sums of money in the several other Counts thereof mentioned, or any part thereof, (although to perform his said several promises and undertakings the said John was afterwards, to wit, on the day and year last aforesaid, at W. aforesaid, requested by the said Andrew), but he to perform his said promises and undertakings, or either of them, hath hitherto altogether refused, and the said several sums
of

2d Count, work and labour, on the retainer.

3d Count, quantum meruit.

of money are still wholly due and unpaid to the said Andrew, to the damage of the said Andrew of pounds; and therefore he brings suit, &c. S. MARRYAT T.

Counts against
an attorney for
negligence. 1st,
for suing in the
name of plain-
tiff's wife for a
debt due to
plaintiff.

FOR that whereas the said John Morton, before and at the time of the making of the promises and undertakings hereinafter mentioned, was and still is one of the attorneys of the said court of our said lord the king, before the king himself: And whereas on the fourth of November A. D. 1779, at Westminster in the said county of Middlesex, one Joseph Walton, esquire, was and still is indebted to the said James Lawson in a large sum of money, to wit, in the sum of one hundred and thirty-three pounds of lawful, &c. for meat, drink, washing, lodging, and other necessaries by the said James Lawson, for Ann the wife of the said J. W. before that time found and provided at the special instance and request of the said J. W. and for money paid, laid out, and expended by the said J. L. for and to the use of the said J. W. at his like instance and request: And the said J. W. being so indebted, afterwards, to wit, on the same day and year last-mentioned, at Westminster aforesaid, in consideration that the said J. L. at the special instance and request of the said J. M. had then and there employed the said J. M. as such attorney as aforesaid, to commence and prosecute an action at law against the said J. W. for the recovery of the said money so due and owing from him to the said J. L. as aforesaid, for a reasonable hire, reward, and compensation to be paid by the said J. L. to the said J. M. for his fees, attendances, work, labour, and expences in that behalf, he the said J. M. undertook, and to the said J. L. then and there faithfully promised, well and truly to perform, fulfill, and execute the business and duty of such attorney in that behalf as aforesaid: And further the said J. L. in fact saith, that it was thereupon the business and duty of the said J. M. as such attorney as aforesaid, to have commenced and prosecuted such action as against the said J. W. in the name and at the suit of the said J. L. and not at the suit of Marianne, the wife of the said J. L.: Nevertheless the said J. M. not regarding his said business and duty as such attorney, nor his said promises and undertaking so made as aforesaid, but contriving, &c. did not commence and prosecute the said action for the recovery of the said money in the name and at the suit of the said J. L.; but on the contrary thereof, afterwards, to wit, in the term of St. Michael, in the twentieth year of the reign of our said lord the present king, negligently, ignorantly, unskilfully, and improperly commenced and prosecuted a certain action of trespass upon the case against the said J. W. in the said court of our said lord the king, before the king himself there, to wit, at Westminster aforesaid, in the name and at the suit of the said M. the wife of the said J. L. by the name and description of M. G. otherwise L. to the damage of the said M. of one hundred and thirty-three pounds, for the recovery of the said sum of money so due and owing to the said J. L. as aforesaid; and such proceedings were thereupon had, that afterwards

wards, to wit, on the day of A. D. 1780, at Westminster aforesaid, upon the trial of the issue joined in the said action the said M. was nonsuited, and afterwards, to wit, in the term of the Holy Trinity, in the twentieth year of the reign of our said lord the present king, it was considered by the court of our said lord the present king, before the king himself, to wit, at Westminster aforesaid, that the said M. should take nothing by her said writ, but for her false claim against the said J. W. should be in mercy, &c.: It was also considered that the said J. W. should recover against the said M. sixteen pounds for his costs and charges which he had been put to about his defence in that behalf, as by the record thereof remaining in the said court of our said lord the king, before the king himself here, to wit, at W. aforesaid, more fully appears: And the said J. L. further says, that the said M. was so nonsuited, and the said judgment obtained against her by reason of the said J. M.'s having improperly commenced and prosecuted the said action in the name and at suit of the said M. L.: And that by reason of the premises the said J. L. hath not only been obliged to pay and hath actually paid to the said J. W. the said sum of sixteen pounds so recovered against the said M. as aforesaid, but has also necessarily laid out and expended another large sum of money, to wit, the sum of thirty-five pounds, in and about the prosecuting of the said action, and hath been also greatly delayed and hindered from recovering the said money so due to him from the said J. W. as aforesaid.

(2d Count, stating the debt, retainer, and promise as in 1st) then, That it was the business and duty of the said J. M. as such attorney as aforesaid, to have commenced and prosecuted such last-mentioned action, and to have sued out the proper writ or writs for that purpose against the said J. W. in the name and at the suit of J. L. only, and not in the names and at the suits of the said J. L. and M. his wife. (Breach.) That the said J. M. did not commence and prosecute the last-mentioned action for the recovery of the last-mentioned money due and owing to the said J. L. as aforesaid, afterwards, to wit, in the term of Easter, in the twentieth year of the reign of our said lord the present king, negligently, unskillfully, and improperly, as such attorney as aforesaid, sued and caused to be sued out of the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, a certain writ of our said lord the king called a *latitat*, against the said J. W. in the names and at the suit of J. L. and M. his wife, and caused the said J. W. to be arrested and held to bail upon the said last-mentioned writ; by reason of which said last-mentioned premises, the said J. L. afterwards, to wit, in the term of St. Michael, in the twenty-first year of the reign of our said lord the present king, was obliged to discontinue and did actually discontinue the last-mentioned proceedings against the said J. W. and was obliged to pay and did actually pay to the said J. W. another large sum of money, to wit, the sum of three pounds three shillings, for the costs of the said J. W. in that behalf, and did also necessarily lay out and expend another large sum of money, to wit,

2d Count, that defendant sued out writ in the name of plaintiff's wife, and that plaintiff was obliged to discontinue.

wit, the sum of twenty pounds, in and about the prosecution and discontinuance of the last mentioned writs and proceedings ; and the said J. L. hath also been greatly delayed and hindered from recovering the said money so due from him the said J. W. as last aforesaid. (Damages, &c.) A. CHAMBRE.

Declaration on special assumpsit, at the suit of the attorney for the plaintiff in the original action against the defendant in such action, for the costs of suit, which defendant promised to pay the present plaintiff in case he would cause plaintiff in the former action to compromise the suit.

MIDDLESEX, to wit. Edward James Baker, gentleman, one of the attornies of our sovereign lord the king, before the king himself present here in court in his own person, according to the liberties and privileges of the said court for such attornies and other officers of the court aforesaid, from time immemorial used and approved of in the said court, complains of Thomas Oliver, being in the custody of, &c. : for that whereas the said plaintiff, as the attorney of and for one A. B. and on his retainer, had, before the making of the promise and undertaking of said defendant hereafter next mentioned, commenced and prosecuted a certain action (that is to say, an action of trespass on the case) at the suit of him the said A. B. and C. his wife, against the said defendant, in the court of our lord the king, before the king himself here (the said court then and still being held at Westminster in the said county of Middlesex), of and for the speaking and publishing of divers scandalous and malicious words by said defendant of and concerning the said C. and on that occasion there was due and owing to the said plaintiff, at the time of the making of the said promise and undertaking of said defendant hereafter next mentioned, a large sum of money for his the said plaintiff's costs and charges in and about the commencing and prosecuting of the said action, to wit, at, &c. : And thereupon heretofore, and whilst the said action was depending in the said court, to wit, on, &c. at, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would cause the said A. B. to settle and compromise the said action so depending as aforesaid, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him the amount of his costs and charges in and about the commencing and prosecuting of the said action, and the settling and compromising thereof : And the said plaintiff avers, that he, confiding in the said promise and undertaking of said defendant so by him made in manner and form aforesaid, did cause the said A. B. to settle and compromise, and that said A. B. did accordingly settle and compromise, the said action so depending as aforesaid ; and that the costs and charges of him said plaintiff in and about the commencing and prosecuting the said action, and the settling and compromising thereof in manner aforesaid, amounted to a large sum of money, to wit, the sum of five pounds of lawful money of Great Britain ; whereof the said defendant afterwards, and after the settling and compromising of said action, to wit, on, &c. at, &c. had notice ; and by means thereof, and according to the tenor and effect of his said promise and undertaking, he the said defendant then and there became liable to pay to

to the said plaintiff the sum of five pounds, when he the said defendant should be thereunto afterwards requested. And whereas the said A. B. before and at the time of the making of the promise and undertaking of said defendant hereafter next mentioned, was indebted to the said plaintiff in a large sum of money, to wit, the sum of five pounds of like lawful, &c. for the work and labour, care and diligence of said plaintiff, by him said plaintiff before that time done, performed and bestowed as the attorney of the said A. B. and on his retainer, in and about the commencing and prosecuting of a certain other action, that is to say, an action of trespass on the case, at the suit of said J. W. and Ruth his wife against said defendant, and for money by said plaintiff before that time laid out, expended, and paid on that occasion for said J. W. and at his special instance and request, and being so indebted he the said defendant heretofore, to wit, on the thirty-first day of June 1777 aforesaid, to wit, at Westminster aforesaid, by a certain memorandum or note in writing signed by him said defendant, according to the form of the statute in such case made and provided, undertook and then and there faithfully promised said plaintiff to pay him said last-mentioned sum of money when he said defendant should be thereto afterwards requested. (Add two Counts, money laid out, &c.; money had and received, &c.; and common conclusion to the whole.)

Drawn by MR. TIDD.

MIDDLESEX, ff. Samuel Goodman and Elizabeth his (a) Declaration wife, late Elizabeth Green, administratrix of all and singular by an administratrix (after her intermarriage) the goods, chattels, rights, and credits which were of Matthew Green her late father, deceased, at the time of his death, who died against an attorney who was employed by the testator in his lifetime to bring an action for him against one A. B. who was thereupon arrested and committed to the custody of the marshal for want of bail, and remained so until the neglect of defendant in not obtaining judgment, whereby A. B. was discharged. (1) "the said" (2) "other"

intestate, complains of Charles Rennett, gentleman, one of the attorneys of the court of our lord the now king, before the king himself present here in court in his own proper person: for that whereas in the lifetime of the said Matthew, to wit, on, &c. at, &c. in, &c. in consideration that the said Matthew, at the special instance and request of the said Charles, had before that time retained, engaged, and employed him the said Charles as his attorney, to sue and prosecute (1) one J. S. at law, for the recovery of a certain (2) large sum of money, to wit, the sum of six hundred and twenty-five pounds of lawful, &c. then and there due and owing from the said J. S. and one G. G. jointly and severally to the said Matthew for principal and interest upon and by virtue of a certain writing obligatory before then, to wit, on, &c. entered into and executed by the said G. G. and J. S. whereby the said G. G. and J. S. jointly and severally became held and firmly bound to the said Matthew in the penal sum of one thousand pounds of like lawful, &c. with a condition to the said writing obligatory thereunder written making void the same on the payment of five hundred pounds of like lawful money, with interest for the same, on a certain day in the said writing obligatory mentioned and then

(a) See Negligence, Index.

past

(3) "com-
mence,"

(4) "last men-
tioned"

(5) "as such"

(6) "after-
wards, in the
lifetime of the
said Matthew,
might have
commenced,
prosecuted, and
carried on such
suit for the re-
covery of the
said debt, and
have obtained
judgment in the
same for the said
debt against the
said J. S. that is
so say, in E.
Term, in the
year aforesaid."

past, for a certain reasonable hire or reward to be therefore paid to the said Charles for the same, he the said Charles undertook, and to the said Matthew in his lifetime then and there faithfully promised, that he would well, truly, carefully, and diligently (3) prosecute and carry on such suit against the said J. S. for the recovery of the said (4) debt, and perform and execute the duty and (5) business of such attorney for the said Matthew therein: And the said Samuel and Elizabeth in fact say, that although the said Charles (6) in part performed his said promise and undertaking, and afterwards, to wit, on, &c. sued and prosecuted out of the court of our said lord the king, before the king himself, the said court then and still being at Westminster, in the said county of Middlesex, a certain precept of our said lord the king, called a bill of Middlesex, directed to the then sheriff of the county of Middlesex, by which said precept the said sheriff was commanded to take the said G. G. and J. S. if they should be found in his bailiwick, and them safely keep, so that he might have their bodies before our said lord the king at Westminster, on Monday next, &c. to answer to the said Matthew in a plea of trespass, and also to the several bills of the said Matthew against the said G. G. and J. S. for one thousand pounds debt severally, according to the custom of the court of our said lord the king, before the king himself to be exhibited; and that the said sheriff should have there then that precept; which said precept was then and there duly indorsed and marked for the said sheriff to take bail therein for five hundred pounds severally, by virtue of an affidavit of the cause of action of the said Matthew against the said G. G. and J. S. in that behalf, before then duly made and filed of record in the said court of our said lord the king, before the king himself, according to the form of the statute in such case made and provided; which said precept so indorsed as aforesaid, afterwards, to wit, on, &c. was delivered to J. H. esquire, and J. B. esquire, who then and there, and until and at the return of the said precept were sheriffs of the said county of Middlesex, in due form of law to be executed; by virtue whereof the said J. H. and J. B. the sheriffs aforesaid, afterwards, and before the return of the said precept, afterwards, to wit, on, &c. took and arrested the said J. S. by his body, and then and there had and detained him in his custody for want of bail at the suit of the said Matthew for the cause aforesaid; until the said J. S. afterwards, to wit, on, &c. was in due manner committed to the marshal of the marshalsea of our lord the king, before the king himself, charged with the said precept, to wit, at, &c. and remained and continued in such custody at the suit of the said Matthew for the cause aforesaid until the discharge of the said J. S. hereafter mentioned: And the said sheriff at the return of the said precept had not the body of the said G. G. but returned thereon that the said G. G. was not found in his bailiwick; and although the said Charles as such attorney as aforesaid, by the rule and practice of the said court, afterwards, and whilst the said J. S. was in the custody as aforesaid, for the cause aforesaid, and during the lifetime of the said Matthew, to wit, in Easter term in the year aforesaid,

aforsaid, might have obtained judgment therein in the said court against the said J. S. for the said debt, to wit, at, &c.: Yet the said Charles well knowing the premises, but not regarding his said last-mentioned promise and undertaking in form aforsaid made to the said Matthew, whose administratrix the said Elizabeth is, in manner aforsaid, did not, although often requested, well, truly, carefully, and diligently prosecute and carry on the said last-mentioned suit for the recovery of the said debt, (7) *and perform and execute the duty and business of such attorney for the said Matthew therein, according to the form and effect of his said promise and undertaking so made as last aforsaid; but on the contrary thereof, wholly neglected and refused and omitted so to do, and did not then or at any other time whatever obtain any such judgment therein; and by reason thereof, and by and through the mere negligence, defect, misconduct, and default of the said Charles in this behalf, and for want of* (8) *such judgment having been obtained against the said J. S. in the lifetime of the said Matthew, the said last-mentioned suit abated upon the death of the said Matthew, and the said J. S. became wholly discharged thereof, to wit, at, &c. the said debt, and every part thereof being then and still unpaid; and by reason of the premises, and also for that the said J. S. escaped, so that he could not nor can now be arrested for the said debt, (9) he the said Matthew in his lifetime was, and the said Samuel and Elizabeth, administratrix as aforsaid, since his death have been and are respectively greatly retarded and hindered in the recovery of the said debt, and the same is wholly lost to the said Samuel and Elizabeth, administratrix as aforsaid, to wit, at, &c.* And whereas also in the lifetime of the said Matthew, to wit, on, &c. in consideration that the said Matthew, at the special instance and request of the said Charles, &c. &c. &c. (go on with the second Count same as first Count, only omitting what is in Italic, and inserting what is in margin): And whereas (&c. &c. for money had and received). Nevertheless the said Charles, not regarding, &c. but contriving, &c. the said Samuel and Elizabeth, as such administratrix aforsaid, in this behalf, to which said Elizabeth the administration aforsaid, in form aforsaid, was granted, hath not paid to them, or either of them; the said last-mentioned sum of money, or any part thereof, although so to do he the said Charles afterwards, to wit, on, &c. was by the said Samuel and Elizabeth requested, but the same to pay to the said Samuel and Elizabeth, administratrix as aforsaid, he the said Charles hath hitherto wholly refused, and still doth refuse: whereupon the said Samuel and Elizabeth, administratrix as aforsaid, say that they are injured, and have sustained damages to the value of two thousand pounds; and therefore they bring suit, &c.; and they bring here into court the letters of administration, &c. &c.

(7) "and obtain judgment thereon in the lifetime of the said Matthew against the said J. S."

(8) "due care and diligence of him therein, and also inasmuch as the"

(9) "which is still owing, due, and unpaid,"

2d Count.

3d Count;

(a) Declaration in *assumpsit* against the executors of an attorney, for negligence in their testator as an attorney of the palace court, in taking special bail irregularly.

MIDDLESEX, to wit. Frederick Dutton complains of T. H. and J. R. executors of the last will and testament of W. M. deceased, being in the custody of, &c. : for that whereas before the time of the making of the promise and undertaking of said W. M. in his lifetime hereafter next mentioned, to wit, on, &c. at Southwark in the county of Surry, and within the jurisdiction of the court hereafter mentioned, one J. W. was indebted to said plaintiff in a large sum of money, to wit, the sum of twenty pounds, for the wages and salary of the said plaintiff, then due and owing from the said J. W. to said plaintiff, for said plaintiff his service of said J. W. at S. aforesaid, within the jurisdiction aforesaid, for a long time before then elapsed, and for certain work and labour of him the said plaintiff, by him the said J. W. and at his special instance and request, before that time there, within the jurisdiction aforesaid, done and performed, and for money by him said plaintiff to said J. W. and at his like special instance and request, before that time lent and advanced, and for other money by him said plaintiff to and for the use of said J. W. and at his like request, before that time there laid out and expended, and for other money to and for the use of said plaintiff before that time there had and received by said J. W. ; and being so indebted, he the said J. W. in consideration thereof, afterwards, to wit, on, &c. at, &c. undertook, and then and there faithfully promised the said plaintiff to pay him the said sum of money, when he the said J. W. should be thereto afterwards requested ; and the said sum of money being wholly unpaid, and said promise and undertaking of said J. W. being wholly unperformed, he the said plaintiff then and there proposed and determined to sue the said J. W. at law, and to hold the said J. W. to special bail, by proper process to be issued out of the court hereafter mentioned, and to proceed to judgment in said court for the recovery of his damages by him sustained on the occasion aforesaid ; of all which said premises the said W. M. in his lifetime, to wit, on, &c. at, &c. had notice x : and thereupon said plaintiff afterwards, to wit, on, &c. at, &c. applied to said W. M. then being one of the attorneys of the said court of the king's palace of Westminster, in order to retain and employ said W. M. as such attorney of that court, to commence and prosecute such action at law on the occasion aforesaid against the said J. W. and the said J. W. did then and there retain and employ said W. M. in his lifetime as such attorney on the occasion aforesaid accordingly, for certain fees, hire, and reward to be therefore paid by said plaintiff to the said W. M. in his lifetime : and thereupon he the said W. M. in his lifetime, then and there, in consideration of the premises, undertook and faithfully promised said plaintiff to commence, carry on, and conduct the said intended suit for the said plaintiff against the said J. W. in a proper manner, and to take due and proper care thereof : || And the said plaintiff further saith, that afterwards, to wit, at the court of the king's palace of Westminster, held at S. aforesaid in the county of S. within the jurisdiction of the said court,

(a) See Negligence, Index.

on

on, &c. before A. B. &c. judges of the court aforesaid, by virtue of the letters-patent of *Charles the Second, late king of England, &c. bearing date at Westminster the fourth day of October in the sixteenth year of his reign*, the said plaintiff, for the recovery of his damages aforesaid, in his proper person levied his certain plaint, and complained against said J. W. of a plea of trespass on the case to the damage of thirty pounds, and then and there found pledges for prosecuting the same, to wit, J. D. and R. R. : And said plaintiff further says, that afterwards, to wit, on, &c. at, &c. within, &c. the said J. W. was taken and arrested by his body at the suit of said plaintiff in the plea aforesaid, by virtue of a certain writ of our lord the now king, called a *ca. ad respondendum*, before then issued by the said W. M. in his lifetime as such attorney as aforesaid out of the said court upon the said plaint; and which said writ was then and there indorsed for bail for twenty pounds, by virtue of an affidavit of the cause of action of said plaintiff against said J. W. in that behalf, before then made by the said plaintiff, and settled in the said court; of all which said premises the said W. M. in his lifetime, as the said attorney of said plaintiff, then and there had notice: and thereupon afterwards, to wit, at the court of the king's palace of Westminster, held at S. aforesaid in the county of Surry, within the jurisdiction of said court, on, &c. in the twenty-second year of the reign of our lord the now king, one R. H. the said R. H. then being one of the attornies of the said court of the king's palace aforesaid, and acting as attorney for said J. W. in defending said action for him said J. W. at the suit of said plaintiff, (1) brought into said court of the king's palace in said suit a certain paper-writing as and for a special bail-piece for said J. W. in said action, with the names and additions of two certain good responsible persons, to wit, one W. H. and one A. W. written thereon, as and for special bail for said John Watts in said action, at the suit of said plaintiff; (2) which said paper-writing, in order to have become a real special bail-piece in said suit for said John Watts, binding upon said W. H. and A. W. ought, by the course and practice of the said court, from the time of the creation thereof hitherto used and approved of in the same, to have been acknowledged by said two persons before some one of the judges of said court as such bail as aforesaid: and thereupon it then and there became and was the duty of said W. M. in his lifetime, as such attorney for said plaintiff as aforesaid, in the proper conduct and managing of said suit, in the taking due and proper care thereof, to have taken care that the said paper-writing, purporting to be a special bail-piece as aforesaid for said J. W. had been regularly and duly acknowledged in said action before he proceeded to the trial of the said action for the recovery of said damages for said plaintiff by him sustained on the occasion aforesaid (3); of all which premises said W. M. In his lifetime then and there had notice: Yet said W. M. in his lifetime not regarding his aforesaid promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud said plaintiff in this respect, did not carry on and conduct piece,"

(In 4d Count)
(1) "pretended to the said W. M. in his lifetime, to have put in special bail for the said J. W. in the said last-mentioned action,"
(and in 4d Count)
(4) "and said R. H. then and there, as such attorney as aforesaid, filed said paper-writing last-mentioned in said court of record, as and for special bail-piece in the said action for the said J. W. at the suit of said plaintiff."
(3) "or proceeded against said W. H. and A. W. either of them, upon the said supposed bail-piece."

conduct said suit for said plaintiff against said J. W. in a proper manner, or take due and proper care thereof, and see or take proper care that special bail for said J. W. was or had been duly or regularly acknowledged in said action, before he further proceeded therein towards a trial for the recovery of the damages aforesaid, according to the course and practice of the said court on the occasion aforesaid (although often requested so to do), but he to do this hath hitherto wholly refused and neglected; and on the contrary thereof, he said W. M. in his lifetime, as the attorney of the said plaintiff, without the said paper-writing being acknowledged as aforesaid, and without any special bail being duly put in for the said J. W. in said action, negligently, carelessly, irregularly, incautiously, ignorantly, and improperly proceeded in the said action or suit in the said court, at the suit of said plaintiff, to a trial thereof, until said plaintiff afterwards, to wit, at the court of the king's palace of Westminster, held at Southwark aforesaid in said county of Surry, and within the jurisdiction of said court, on Friday the third of May in the twenty-second year aforesaid, by the consideration and judgment of the said court, recovered against the said J. W. his damages by him sustained, as well on the occasion aforesaid as for his costs and charges by him about his suit in that behalf expended, twenty-three pounds and sixpence: And said plaintiff further saith, that said twenty-three pounds and sixpence still remain wholly unpaid to said plaintiff, and said plaintiff necessarily laid out and expended a large sum of money, to wit, the sum of twenty pounds, in and about the carrying on said action or suit; and that no special bail whatever hath been ever put in for the said J. W. in said action; and that said J. W. before said recovery of said damages, costs, and charges aforesaid, to wit, on the second April in the twenty-second year aforesaid, at Westminster aforesaid, absconded and secreted himself, and still doth abscond and secrete himself in places unknown to said plaintiff; whereby, and for want of special bail being put in for said J. W. in said action, said plaintiff hath wholly lost said damages, costs, and charges so recovered by him as aforesaid, and other necessary expence of his money so laid out by him as aforesaid. And whereas, &c. before the making (&c. a second Count like the first, till you come to this mark x, then proceed as follows): and thereupon the said plaintiff afterwards, to wit, on, &c. at, &c. applied to the said W. M. in his lifetime, he the said W. M. then being one of the attornies of the court of said king's palace, in order to retain and employ said W. M. as such attorney of that court, to commence and prosecute such action and proceedings at law in said court, on the occasion last aforesaid, against said J. W. and to cause said J. W. to be arrested and held to special bail in such action, and if bail above were pretended to be put in for the said J. W. by and in such action, to take due and proper care that the same were properly put in and acknowledged in such action; and said plaintiff did then and there retain and employ said W. M. in his lifetime as such attorney on the occasion last aforesaid accordingly, for certain fees, hire, and reward

to be therefore paid by said plaintiff to said W. M. in his lifetime; and thereupon said W. M. in his lifetime then and there, in consideration of the premises last aforesaid, undertook and faithfully promised said plaintiff to commence, carry on, and conduct said last-mentioned intended action and proceedings for said plaintiff against said J. W. in a proper manner, and to take due and proper care thereof, *and to cause said J. W. to be arrested and held to special bail in such action if he possibly could, and if special bail were pretended to be put in for said J. W. in such action, to take due and proper care that the same were duly and regularly acknowledged in such action*; (then go on to this mark || in folio 322, and proceed from thence, omitting what is in *Italic*, and inserting what is in the margin, till you come to this mark || in folio 324, then go on as follows): and said W. M. as the attorney of said plaintiff, afterwards, to wit, on the fifth day of July in the twenty-second year of the reign of our sovereign lord the now king, sued said W. H. and A. W. at law in said palace court, by writ of *scire facias quare executionem non*, on such pretended recognizance of bail as aforesaid, and proceeded in such suit until he said W. M. in his lifetime, as such attorney as aforesaid, afterwards, to wit, on the twenty-fifth day of October A. D. 1782, signed a certain judgment in said court against said W. H. and A. W. for the said damages, costs, and charges at the suit of said plaintiff upon said pretended recognizance of bail of the said W. H. and A. W.; and said W. M. in his lifetime, as such attorney as aforesaid, afterwards, to wit, on the first day of May A. D. 1783, at Westminster aforesaid, caused and procured said A. W. to be taken in execution by his body, at the suit of said plaintiff, under pretence of a certain writ of *capias ad satisfaciendum* issued out of said palace court by said W. M. in his lifetime, as such attorney as aforesaid, at the suit of said plaintiff against said A. W. and said W. H. founded upon the said last-mentioned judgment, and to be kept and detained in custody on that occasion for a long time, to wit, for the space of five days then next following, and until A. W. for obtaining his release and discharge from his said imprisonment was forced and obliged to lay out and expend, and did then and there necessarily lay out and expend a large sum of money, to wit, the sum of five pounds, in and about the obtaining his relief and discharge from said imprisonment: And said plaintiff in fact says, that afterwards, to wit, on the seventh of May in the year last aforesaid, said judgment and execution against said W. H. and A. W. as such supposed bail as aforesaid, were totally set aside in and by said court, and rendered null and void; and said A. W. afterwards, to wit, in Easter term, in the twenty-third year of the reign of our lord the now king, for the recovery of his damages by him sustained on occasion of committing the said trespass, assault, and imprisonment upon him as aforesaid, sued said plaintiff as well as said W. M. in his lifetime at law, in the court of our lord the king, before the king himself, at Westminster aforesaid, and is proceeding in that plea against the said plaintiff to obtain final judgment and execution against him therein; whereof said W. M. in

his lifetime then and there had notice; by means of all which said last-mentioned premises, and inasmuch as said J. W. hath absconded and secreted himself so as to avoid being taken in execution for the damages so recovered as last aforesaid, and is unable to pay the same, said plaintiff hath wholly lost his said damages, and said plaintiff hath been forced and obliged fruitlessly to lay out and expend, and hath laid out and expended a large sum of money, to wit, the sum of forty pounds, in and about the carrying on the said suit against the said J. W. and the process against said W. H. and A. W. and in endeavouring to support the said judgment and execution, and in and about the defence of himself in the said suit so brought against him by said A. W. and is liable to make satisfaction to said A. W. for certain damages, costs, and charges by him sustained on occasion of the committing said assault and false imprisonment upon said A. W. And whereas, &c. (two Counts, money laid out, and money had and received, &c. with common conclusion to them.)

(c) Declaration against an attorney of K. B. for neglecting, on the trial of an ejectment (in which present plaintiff was lessor of plaintiff), to produce the probate of a will, for want of which plaintiff was consulted.

MIDDLESEX, to wit. Edmund Francis Calze, esquire, complains of George S. gentleman, one of the attornies of the court of our lord the now king, before the king himself, present here in court in his own proper person: for that whereas heretofore, to wit, in Hilary term in the twenty-sixth year of the reign of our lord the now king, in the court of our said lord the king of his bench, at Westminster in the said county of Middlesex, before the right honourable Alexander lord Loughborough and his companions, justices of our said lord the king of his bench at Westminster aforesaid, a certain issue in a certain action of trespass and ejectment of farm then depending in the said court of the bench here, to wit, at Westminster aforesaid, in which one John Goodtitle, on the several demises of E. F. C. executor of the last will and testament of Ann Bontine, widow, deceased, and E. F. C. was nominal plaintiff, and one E. J. widow, and E. S. earl of A. in the kingdom of Ireland were defendants, for recovery of the possession of a certain messuage and premises, with the appurtenances, situate and being in the parish of Mary-le-Bone otherwise Mary-Bone, in the said county of Middlesex, and was in due manner joined, and afterwards, at the sittings of *nisi prius* holden after the term of St. Hilary at Westminster aforesaid in the said county of Middlesex, in the great hall of pleas there called Westminster Hall, on the eighteenth of February 1785, before the said Alexander lord Loughborough, his majesty's chief justice of his court of the bench at Westminster aforesaid, the said issue in the action or suit aforesaid came on to be tried by a certain jury of the said county in that behalf duly sworn and taken between the parties aforesaid, to wit, at Westminster aforesaid in the said county. And whereas the said E. F. C. long before the commencement of the said action or suit, was and still is executor of the last will and testament of the said A. B. widow, deceased; which said will of the said A. B. widow, deceased, he the said E. F. long before the

(a) See Negligence, Index.

commencement of the said action or suit, to wit, on the twelfth of November 1778, at, &c. duly proved in the proper ecclesiastical court. And whereas the said George, from the commencement of the said action or suit, and from thence until and at the several times hereinafter mentioned, was by the said E. F. C. retained and employed as attorney of the said E. F. C. in the said suit, for hire and reward to be therefore paid to the said G. for his fees, work, and labour in that behalf, to wit, at, &c.; and the said George being so employed as attorney for the said E. F. as aforesaid in the said suit, and employed by him to prosecute the said suit, in consideration thereof, to wit, on the first of January 1786, at, &c. undertook, and to the said E. F. then and there faithfully promised, that he the said George the business and duty of such attorney in the said suit would well and faithfully perform and execute. And whereas at and upon the trial of the said action or suit it became and was material and necessary on the part and behalf of the said E. F. for the maintenance of his said action or suit, to produce and give in evidence to the jury aforesaid the probate of the will of the said A. B. deceased, or an exemplification of the probate thereof, under the seal of the proper ecclesiastical court in that behalf; and it was upon such trial the duty and business of the said G. as such attorney as aforesaid, to have produced and given in evidence to the jury aforesaid the probate of the said will of the said Anne Bontine deceased, or an exemplification thereof as aforesaid, which he the said G. might and would have done, and which he was advised to do: Yet the said G. in no wise regarding his said promise or undertaking, or his duty in that behalf, wrongfully, negligently, and carelessly neglected and omitted to produce and give in evidence to the jury aforesaid the probate of the will of the said A. B. or an exemplification thereof; by means whereof the said John Goodtitle, the nominal plaintiff in the said action, became nonsuit in the said action; and by reason and means of which said premises, he the said E. F. hath not only been forced and obliged to pay, and hath actually paid to the said E. J. and the said earl a large sum of money, to wit, the sum of forty-two pounds of, &c. for the costs and charges of them the said E. J. and the said earl of the said nonsuit, and hath also been forced and obliged to lay out and expend another large sum of money, to wit, the sum of pounds of, &c. in and about the commencing, carrying on, and prosecuting the said action or suit so as aforesaid commenced and prosecuted, but hath also been deprived and hindered from recovering and obtaining possession of the said messuage and premises, and hath thereby lost divers great gains and profits, to wit, at, &c. (Money paid, laid out, and expended, lent and advanced; money had and received; common breach.)

Drawn by MR. GRAHAM.

MIDDLESEX, *ss.* For that whereas at the time of the making of the promise and undertaking hereafter next specified, to wit, on the sixteenth June 1722, at Westminster in said county, *special assumpsit, in consideration plaintiff* would bring a cause in chancery on to a hearing, defendant promised to pay his charges on such a day.

of Middlesex, a certain cause or suit between one B. B. plaintiff and S. B. joined at issue, was had and depending in the high court of chancery, and ready to be heard before the chancellor. And whereas said defendant, in consideration that said plaintiff would prosecute and bring, or cause said cause or suit to be brought to a hearing before the lord chancellor, undertook, and then and there faithfully promised said plaintiff, to pay him all his fees and disbursements which he the said plaintiff should deserve, or lay out, or cause to be laid out before the twenty-third of October then next following: And said plaintiff in fact says, that he, confiding in said promise and undertaking of said defendant, afterwards, and before said twenty-third October then next following, to wit, on the day of A. D. 1722, at, &c. aforesaid, had prosecuted and brought that cause or suit before Thomas earl of Macclesfield, lord chancellor of Great Britain, to be heard; and that he said plaintiff on that occasion, before said twenty-third day of October then next following, and after the making of said promise and undertaking, had laid out and expended divers sums of money, amounting in the whole to pounds; and that he said plaintiff, for his fees in that particular, reasonably deserved to have of said defendant pounds, to wit, at, &c. aforesaid; whereof said defendant afterwards, to wit, on same day and year last aforesaid, there had notice. And whereas, &c. (a Count upon a promissory note, nineteenth June 1722, for four pounds six shillings and sixpence upon demand for value received, and Counts for work and labour upon retainer of defendant, and money laid out, &c.; a common conclusion.)

Drawn by MR. WARREN.

BY AND AGAINST AUCTIONEERS.

Against an auctioneer, for not putting up goods to sale agreeable to advertisement.

LONDON, ff. N. L. C. complains of H. P. D. being, &c.: for that whereas heretofore, to wit, on, &c. that is to say, at L. aforesaid, in the parish, &c. in consideration any person or persons would purchase all or any of the goods and merchandizes hereafter mentioned, he the said defendant did assert, publish, and promise that there was to be sold, thereby meaning, that there should and would be put up to sale by auction at the custom-house of Harwich in the county of Essex, on Tuesday, &c. at ten o'clock in the forenoon, the following goods in sundry lots, viz. (here insert the bill of sale): And the said plaintiff avers, that he, confiding in the promise and undertaking of the said defendant; did afterwards, on, &c. go and perform a certain journey, to wit, from L. aforesaid to H. aforesaid, to inspect and view the laid goods, and with an intent to bid for and purchase on the next day, being the aforesaid Tuesday the twenty-fifth of July aforesaid, a great part thereof at such intended auction; and did then and there, to wit, on the said Tuesday, &c. attend at ten in the forenoon, to wit, at the custom-house of H. for the purpose aforesaid, and did then and there request the said defendant to put up for sale and sell by auction the

said

said goods, according to the tenor of his promise aforesaid, that he the said plaintiff might bid for and purchase a great part of the said goods, he the said plaintiff then and there intending so to do, and being ready to comply with the conditions of sale: Yet the said defendant, not regarding, &c. but contriving, &c. he the said defendant did not, on the said Tuesday, &c. put up to sale by auction or sell the goods aforesaid, or any part thereof, at the custom-house aforesaid, according to the tenor of his aforesaid promise, but therein wholly failed and made default (although to perform his promise aforesaid he the said defendant was requested by the said plaintiff on the day and year last-mentioned, to wit, at, &c.) ; but he the said defendant to perform his promise aforesaid hath hitherto wholly refused ; by means whereof the said plaintiff was unnecessarily put to great expences in the performance of the journey aforesaid from L. aforesaid to H. aforesaid, and in his return from thence back again to L. aforesaid, and also during his necessary stay at H. aforesaid, to a large amount in the whole, to wit, the amount of forty pounds, and also lost and was deprived of the profit and advantage which he might and would have made by the purchase of a great part of the said goods, to wit, at L. aforesaid, &c. . (Add another Count like the above, only say, “ that in “ consideration plaintiff would buy :” two more Counts, *indebitatus assumpsit* and *quantum meruit* for work and labour in going journies and giving attendance, and for other work, &c. ; money laid out, lent, and received ; common conclusion to the three last Counts.)

MIDDLESEX, *vs.* Alexander Small, esquire, complains of Thomas S. and Thomas D. being, &c. : for that whereas the said defendants heretofore, to wit, on, &c. at, &c. in, &c. put up and exposed to sale, and caused to be put up and exposed by public auction, in various lots, certain freehold and leasehold estates, with the appurtenances, upon the conditions of sale following, that is to say, first, &c. (here copy the conditions of the sale) : And the said Alexander in fact further says, that he the said Alexander attended at the said sale, and was then and there at such sale the highest bidder for and purchaser of, and did then and there at such sale accordingly purchase certain of the said estates and premises, with the appurtenances, so put up and exposed to sale as aforesaid, to wit, the sixth lot thereof, consisting of certain freehold and leasehold premises, situate in the parishes of, &c. consisting of the manor, &c. and of divers messuages, &c. with the appurtenances, in the particulars of the said lot mentioned, at and for a certain large sum of money, to wit, the sum of four thousand eight hundred pounds of lawful money of Great Britain ; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said Alexander, at the special instance and request of the said Thomas S. and Thomas D. had undertaken, and then and there faithfully promised the said defendants, to perform and fulfil every thing in the said conditions of sale contained on his part and behalf as such purchaser as aforesaid at the said sale to be performed and fulfilled, they the said defendants

Declaration against defendant, who was an auctioneer, for not making a good title to premises sold to plaintiff.

under-

undertook, and then and there faithfully promised the said Alexander to perform and fulfil, and that every thing in the said conditions of sale contained on the part and behalf of the seller of the said sixth lot so bid for and purchased by the said Alexander as aforesaid should be performed and fulfilled : And the said Alexander further says, that he the said Alexander, confiding in the said promise and undertaking of the said defendants, did then and there, at the said sale, pay down immediately a deposit of forty pounds *per cent.* in part of the purchase-money of and for the said lot so by him bid for and purchased as aforesaid, and on that occasion did then and there pay to the said defendants a certain large sum of money, to wit, the sum of five hundred pounds of like lawful money, and did also then and there sign an agreement for payment of the remainder of the said purchase-money on or before the said twenty-fifth day of, &c. on having a good title, according to the conditions of sale in that behalf ; and although he the said Alexander was ready and willing, and offered to pay the remainder of the said purchase-money, according to the said third condition of sale, and also to accept a proper conveyance at his own expence of the said premises so by him bid for and purchased as aforesaid ; and although he hath performed and fulfilled, and been ready to perform and fulfil all other matters and things in the said conditions of sale contained, on his part and behalf, as such purchaser as aforesaid, to be performed and fulfilled, according to the tenor and effect of the said conditions of sale, and his said promise and undertaking in that behalf made as aforesaid ; and although the said defendants have been frequently required by the said Alexander to make, or cause to be made to him the said Alexander, a good title to the said premises so put up to sale, and sold to him as aforesaid, according to the aforesaid conditions of sale upon the seller's part and behalf ; Yet the said defendants, contriving and fraudulently intending to deceive and defraud him the said Alexander in this behalf, did not regard their said promise and undertaking so by them made as aforesaid, but thereby craftily and subtilly deceived the said Alexander in this, that at the time of the aforesaid sale, and of his making such purchase as aforesaid, nor at any time from thence hitherto, could a good title to the said premises so by him bid for as aforesaid be or have been made, nor can such title now be made to him the said Alexander by them the said defendants, or by or on behalf of the seller or sellers of such premises at the aforesaid sale, nor have they the said defendants, or either of them, or any other person or persons whatsoever, as yet made such title, or any conveyance whatsoever of such premises, unto him the said Alexander, but have therein wholly failed and made default, contrary to the tenor and effect of the aforesaid promise and undertaking of the said defendants, and in breach and violation thereof, to wit, at, &c. : And the said Alexander further says, that the said defendants have not returned to him the said Alexander the said sum of five hundred pounds so by him paid as and by way of such deposit as aforesaid, nor any part thereof ; whereby, and by reason of which several premises, the said Alexander hath lost and been deprived of all rents, benefit, and advantage

tage which would otherwise have arisen and accrued to him from having a good title made to him of the premises so by him bid for and purchased as aforesaid; and hath been unavoidably put to a fruitless expence, amounting in the whole to a large sum of money, to wit, the sum of twenty pounds, in endeavouring to obtain such title, and in investigating the seller's right to sell the same, and hath lost and been deprived of certain interest, benefit, and advantage, amounting in the whole to a large sum of money, to wit, the sum of one hundred pounds of like lawful money, which would otherwise have arisen and accrued to him from using and employing the said sum of five hundred pounds so by him paid by way of deposit as aforesaid, to wit, at, &c. (Add all the common Counts.)

V. LAWES.

MIDDLESEX, to wit. Thomas Parker, esquire, complains of James Christie, being, &c. : for that whereas the said Thomas, before and at the time of the making of the promise and undertaking of the said James hereafter next mentioned, and also at the time of the sale hereafter next mentioned, was seised in his demesne as of fee of and in a certain villa, consisting of a messuage or dwelling-house, with coach-house, stabling, garden, meadow, and pasture ground thereto belonging, with the appurtenances, situate at, &c. in, &c. And whereas also the said James, before and at the time of the making of the said promise and undertaking of him the said James hereafter next mentioned, was and still is an auctioneer; and the said Thomas being so seised of and in such several premises as aforesaid; and the said James so being an auctioneer as aforesaid; and the said Thomas being desirous of selling and disposing of his said several premises, with the appurtenances, by public auction; he the said Thomas heretofore, to wit, on, &c. at, &c. at the special instance and request of the said James, retained and employed him the said James in his said business of an auctioneer accordingly, and for certain reasonable commission or reward on that occasion to sell and dispose of the said premises for him the said Thomas by public auction, upon and under certain terms and conditions of sale to the effect following, that is to say, first, &c. (set forth the conditions of sale *verbatim*): and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said Thomas had so retained and employed him the said James, as such auctioneer as aforesaid, to sell and dispose of the said premises of and for him the said Thomas as aforesaid, he the said James undertook, and then and there faithfully promised the said Thomas, to sell and dispose of such (1) premises for him the said Thomas, (2) *upon and under such conditions of sale as aforesaid, and according to the tenor and effect thereof, and also to see such conditions fulfilled by the purchaser as to all things thereby required to be done by such purchaser at the time of the sale*: And the said Thomas avers, that although the said (3) premises of him the said Thomas were afterwards, to wit, on, &c. put up to sale and sold by public auction by the said James, as such auctioneer as aforesaid, of and for him the said Thomas, upon and under such terms and conditions of sale as (4) aforesaid; and although he the

Declaration, plaintiff employed defendant, who was an auctioneer, to sell a house, the conditions of which sale required the purchaser to pay down a deposit of 20l. *per cent.* and to sign an agreement to pay the remainder in a certain time; defendant sold the house, but neglected to demand the deposit and the signing of the agreement; the purchaser some time after refused to complete his purchase, whereby the house has been untenanted, and is greatly injured by means thereof.

(1) "last-mentioned"

(2) "pursuant to the tenor and effect of the aforesaid"

(3) "last-mentioned"

(4) "last"

said

- (1) "last mentioned" with the appurtenances, for him the said Thomas to one F. R. who was then and there at (2) *the said sale declared to be the highest bidder*, for and as such (3) bidder, was the buyer of the said premises at the said sale thereof, at and for a certain large sum of money, to wit, the sum of three thousand seven hundred and twenty-seven pounds of lawful, &c. ; and although the said James, immediately upon the said F. R. so becoming and being declared the buyer of the said (4) premises at the said sale thereof as aforesaid, ought, as such auctioneer as aforesaid, to have required and to have obtained from him the said F. R. a deposit of twenty pounds *per cent.* in part of the (5) purchase-money so by him bid for the said premises as aforesaid, and also to have caused him to sign an agreement for the payment of the remainder of (6) *the said purchase-money on or before Midsummer-day then next, according to the tenor and effect of the aforesaid conditions of sale in that behalf, and the intent and meaning of the aforesaid promise and undertaking of him the said James* : Yet the said James, not regarding his said promise and undertaking, nor his duty, as such auctioneer as aforesaid, in that behalf, but contriving and fraudulently intending to deceive and injure the said Thomas, did not, at such auction and sale of the said premises, require and obtain of and from him the said F. R. such deposit of twenty pounds *per cent.* as aforesaid, or any other sum of money whatsoever, in part of the purchase-money, nor cause and procure him the said F. R. so being such purchaser of the said (7) premises as aforesaid, to sign such agreement as aforesaid for payment of the remainder of the said (8) purchase-money on or before Midsummer-day then next, or at any other time whatsoever, but neglected and omitted so to do, and therein *wholly failed and made default*, contrary to his duty in that behalf, and in breach and violation of his (9) *aforesaid promise and undertaking*, to wit, at, &c. ; by reason of which said several premises, and that the said F. R. (10) did not, at Midsummer next after the aforesaid sale, or at any other time, complete the said purchase so by him made as aforesaid, but hath declined and refused so to do, or ever to pay the said sum of three thousand seven hundred and twenty-seven pounds so by him bid for the aforesaid premises as aforesaid, and he the said Thomas hath been prevented from receiving such deposit as aforesaid on such purchase-money, and hath been disabled from availing himself of the forfeiture thereof, and also lost and been deprived of all benefit and advantage which would otherwise have arisen and accrued to him from the sale and disposal of (11) *the aforesaid premises*, and from the absolute and complete purchase of the same ; and for want of such agreement as aforesaid having been so signed by the said F. R. as aforesaid, he the said Thomas hath lost and been deprived of all remedy whatever against the said F. R. to complete and carry into execution his (12) *aforesaid purchase*, or to obtain an equivalent in damages on his refusal so to do, and the said several premises are still unfold and undisposed of, and so are likely to continue ; and by reason of the same having been unfurnished and left ready for the same being taken possession of by the said F. R. under his aforesaid purchase thereof, the said several
- (2) "such auction"
- (3) "highest"
- (4) "last mentioned"
- (5) "last mentioned"
- (6) "such"
- (7) "last mentioned"
- (8) "last mentioned"
- (9) "said last mentioned"
- (10) "although the said Thomas hath at all times been able and willing to make a good and legal title and conveyance to him thereof,"
- (11) "his said last mentioned"
- (12) "last mentioned"

several premises, and particularly the aforesaid messuage or dwelling-house, in the painting, papering, and hangings thereof, are greatly injured and damaged, and necessarily require a considerable sum of money, to wit, the sum of two hundred pounds, to be laid out in repairing of them, to wit, at, &c. And whereas also heretofore, to wit, on, &c. at, &c. in consideration that the said Thomas, at the like special instance and request of the said James, had retained and employed him the said James in his said business of an auctioneer, for certain commission or reward on that occasion, to sell and dispose of a certain other freehold villa, consisting of a messuage or dwelling-house, with coach-house, stabling, garden, meadow, and pasture ground thereto belonging, situate at, &c. by public auction, upon and under certain terms and conditions of sale to the effect following, that is to say, that the purchaser should pay down immediately into the hands of him the said James a deposit of twenty pounds *per cent.* in part of the purchase-money, and sign an agreement for the payment of the remainder on or before Midsummer next; and that upon failure of complying with the said condition, the money deposited should, at the expiration of the time before limited, become forfeited to the vendor, he the said James undertook, and then and there faithfully promised the said Thomas, to accordingly sell, &c. &c. (Finish this Count same as the last, only omitting what is in *Italic*, and inserting what is in margin. Add the common Counts; an account stated; and common conclusion.)

W. BALDWIN.

Hilary Term, 28. Geo. 2.

MIDDLESEX, *ss.* John Prestage against Stephen Bougent. Declaration on special agreement at suit of an auctioneer against defendant who had employed him to sell goods, and to advertise them to be sold at his room, and afterwards selling them by another auctioneer.

For that whereas said plaintiff at the time of the making of the promises, &c. hereafter next mentioned, was, and from thence hitherto hath been, and still is lawfully possessed of and in a certain room called an auction-room, for selling of goods by contract or auction, situate and being in the parish of St. James, within the liberty of Westminster, in the county of Middlesex; and also at the time of the making of the agreement hereafter mentioned, said plaintiff was, and for divers years then last past had been, and ever since hath been, an auctioneer of goods and chattels by contract or auction at his said auction-room: And also whereas said defendant before the making of said agreement hereafter mentioned, had got and collected together many curious pictures and picture frames, and was then about to sell and expose the same to sale by contract or auction: And whereas on, &c. 1754, at, &c. aforesaid, it was agreed by and between said defendant and said plaintiff, that said plaintiff should expose to sale by auction, in his business or employ of an auctioneer or seller of goods and chattels by contract or auction, said pictures and picture frames of said defendant at said auction-room of said plaintiff; and that said plaintiff, for the better and more effectually making known said auction and sale of said goods and chattels of said defendant, and for the better selling of said goods and chattels of said defendant, should, at his own expence, publish and advertise in the public newspapers a proper number

number of advertisements of such intended sale of said goods and chattels of said defendant, and cause to be made and printed proper catalogues of said goods and chattels, and should receive said goods and chattels into said auction-room, and safely keep same there until same should be sold and delivered to the respective buyers thereof; and that said plaintiff should pay and defray all the charges and expences of the keeping, shewing and exposing to view of said goods and chattels and of said sale; and that said defendant should therefore pay unto said plaintiff the sum of one shilling and sixpence in the pound, or twenty shillings, of all such money as said goods and chattels should at such sale be sold for, and so on in proportion for all such money as said goods and chattels should at such sale be sold for, and the sum of one shilling for each and every lot of said goods and chattels which should happen to be left unsold at such sale; and such agreement being so made (mutual promises, &c.): and although said plaintiff in pursuance of said agreement did afterwards, to wit, on the day and year last aforesaid, and on divers other days and times afterwards, at his own expence and labour, at the parish aforesaid, in the county aforesaid, for the better and more effectually making known said intended auction, and the sale of the said goods and chattels of said defendant, did publish and advertise, and cause and procure to be published and advertised in the public newspapers the then intended sale of said goods and chattels of said defendant by auction, at said auction-room of said plaintiff, and prepared his said auction-room for the reception of said goods and chattels of said defendant for said intended sale thereof, and did divers other necessary things towards the carrying on said sale; and although said defendant did, after the making said agreement, bring or cause to be brought into said auction room part of said goods and chattels as if he intended to perform his said agreement on his part; and although said plaintiff received said part of said goods and chattels into his room, and has always been ready and willing, and has often offered to perform and fulfil said agreement, in all things therein contained on his part and behalf to be performed and fulfilled, according to the true intent and meaning of said agreement: Yet said defendant, not regarding his aforesaid promises and undertakings, but contriving, &c. to deceive, &c. said plaintiff in this behalf, hath not permitted or suffered said plaintiff to sell said goods and chattels, or any part thereof, by auction or otherwise, but has wholly refused so to do, nor has he brought, or caused to be brought, the other part of the said goods and chattels to said auction-room for sale, but has hitherto wholly refused so to do, and after the making of the said agreement after that said plaintiff was at such expence and labour as aforesaid, to wit, on the first of January A. D. 1755, caused to be taken away from and out of such auction-room all such part of said goods and chattels which said defendant had caused to be brought thither, and has since caused all said good and chattels to be sold by auction by another auctioneer, and at another auction-room, to wit, by one Langford, at his the said Langford's auction-room, and contrary to the promise and undertaking of said defendant,

defendant, to wit, at, &c. aforesaid: And whereas, &c. (Counts for work and labour by plaintiff and his servants. Money laid out, &c.; and common conclusion to the three last Counts.)

This action will not lie till the goods be sold at Langford's; so if they are not sold do not deliver the declaration. If the sale at Langford's ended after the

first day of Term, take care you make a special memorandum to your declaration, and do not deliver it as it stands now.

Drawn by Mr. WARREN.

AGAINST BAILIFFS.

SOMERSETSHIRE, *ss.* Jonathan Chubb complains of Richard Carver being, &c.: for that whereas, before the making of the promise and agreement hereinafter mentioned, one Giles Masters was indebted to the said J. C. in a large sum of money, to wit, the sum of twenty pounds thirteen shillings and tenpence halfpenny of lawful, &c. for goods sold and delivered by the said Jonathan to the said Giles, to wit, at Taunton in the said county, and for the recovery of the said sum of twenty pounds thirteen shillings and tenpence halfpenny due from the said Giles to the said Jonathan, he the said J. before the making of the promise and agreement hereinafter next mentioned, to wit, on the seventeenth day of November 1772, sued forth, out of the court of our sovereign lord the king of the bench (the said court then and still being at Westminster in the county of Middlesex,) a certain writ of *capias ad respondendum*, directed to the then sheriff of the county of S. against the said G.; by virtue of which said writ, he the said R. C. as *bailiff* to the then sheriff of S. afterwards, and before the making of the promise and agreement hereinafter mentioned, to wit, on the twenty-seventh of November in the said year of Our Lord 1772, at T. aforesaid, arrested the said G. Masters, and then and there had him the said G. M. in custody upon the said writ for the said debt, and afterwards, to wit, on the said twenty-seventh of November in the said year 1772, at T. aforesaid in the said county, received of him the said G. M. the sum of ten pounds ten shillings of lawful, &c. part of the said sum of twenty pounds thirteen shillings and tenpence halfpenny so as aforesaid due from the said G. to the said J. and then and there permitted and suffered the said G. M. to escape and go at large, he the said Richard afterwards, to wit, on the twelfth March 1773, at T. aforesaid in the said county, in consideration of the premises, and also in consideration that Mr. William Bridge, attorney for the said G. M. had promised to pay to him the said Richard the residue of the said sum of twenty pounds thirteen shillings and tenpence halfpenny so as aforesaid due from the said G. to the said J. the residue then and there being the sum of ten pounds three shillings and tenpence halfpenny of like lawful money, undertook, and to the J. then and there faithfully promised to pay him the said last-mentioned sum of ten

On a special agreement, whereby defendant, who was a *bailiff*, having arrested one G. M. at the suit of the plaintiff, received from him part of the debt to plaintiff, and suffered him to go at large, and promised to pay plaintiff remainder on Michaelmas term by a memorandum in writing, unless the same should be recovered in meantime at the bailiff's expence, then to be paid immediately.

ad Count like
first, omitting
the permitting
to escape, and
laying the arrest
to be on a differ-
ent day for the
residue.

ten pounds three shillings and tenpence halfpenny on the first day of Michaelmas term then next ensuing, unless the same should be recovered at the expence of the said Richard before the said first day of Michaelmas term aforesaid: And the said J. doth aver, that the said sum of ten pounds three shillings and tenpence halfpenny nor any part thereof, was not, before the first day of Michaelmas term next after the making the said promise and undertaking of the said Richard, recovered at the expence of the said Richard; by reason whereof, he the said Richard afterwards, to wit, on the eighth November 1773, became liable to pay the said sum of ten pounds three shillings and tenpence halfpenny to the said J. to wit, at T. aforesaid in the said county. And whereas also afterwards, to wit, on the twenty-seventh of March in the said year 1773, at T. aforesaid in the said county, the said Richard, as *bailiff* to the then sheriff of S. upon and by virtue of a certain writ of *capias ad respondendum* before that time issued out of the court of our lord the king of the bench, at Westminster aforesaid, against the said G. M. at the suit of the said J. arrested the said G. M. for another sum, to wit, for the sum of twenty pounds thirteen shillings and tenpence halfpenny of like lawful money due from the said G. M. to the said Jonathan, and then and there received of him the said G. M. the sum of other ten pounds ten shillings of like, &c. part of the said last-mentioned sum of twenty pounds thirteen shillings and tenpence halfpenny so as aforesaid due from the said G. to the said J. and one William Bridge, attorney for the said G. M. had promised to pay him the said Richard the residue of the said last-mentioned sum of money due from the said G. to the said J. being the sum of other ten pounds three shillings and tenpence halfpenny of like, &c. he the said Richard, in consideration of the premises last aforesaid, afterwards, to wit, on the same day and year last aforesaid, at T. aforesaid, undertook, and to the said Jonathan then and there faithfully promised, to pay him the said sum of ten pounds three shillings and tenpence halfpenny on the said first day of Michaelmas term next ensuing, if the same was not before that time recovered at the expence of the said Richard: And the said Jonathan doth aver, that the said last-mentioned sum of ten pounds three shillings and tenpence halfpenny was not, nor was any part thereof, recovered before the said first day of Michaelmas term next after the making of the said promise and undertaking last aforesaid, at the expence of the said Richard; and by reason thereof, he the said Richard afterwards, to wit, on the eighth November in the said year 1773, became liable to pay the said last-mentioned sum of ten pounds three shillings and tenpence halfpenny to him the said Jonathan, to wit, at T. aforesaid. And whereas also, &c. (Money had and received; money paid, laid out, and expended.) F. BULLER.

MIDDLESEX,

MIDDLESEX, to wit. E. E. esquire, complains of W. C. Declaration against defendant being, &c. : for that whereas the said E. on the twenty-ninth of September 1783, at the parish of in the said county of Middlesex, demised to one W. H. a certain messuage, with the appurtenances, situate and lying in the parish aforesaid, to have and to hold the same to him the said W. H. from thenceforth, for one whole year from thence next ensuing, and so from year to year for so long a time as the said E. and W. H. should please, yielding and paying therefore yearly, by the said W. H. to the said E. for and during so long a time as the said W. H. should hold the said demised premises, with the appurtenances, by virtue of the said demise, the yearly rent or sum of of, &c. at the feasts of the Birth of Our Lord Christ, and the Annunciation of the Blessed Virgin Mary, St. John the Baptist, and of St. Michael the Archangel, by even and equal portions; by virtue of which demise the said W. H. afterwards, to wit, on the same day and year aforesaid, entered into the said demised premises, with the appurtenances, and was thereof possessed, and by virtue of the said demise held the same, continuing from the commencement of the said term until the twenty-fourth of June, being the feast of St. John the Baptist, 1784, and from thence until and at the time of the grievance hereinafter mentioned: And the said E. further says, that pounds of the rent aforesaid, for half a year ended on the twenty-fourth of June 1784, were in arrear and unpaid from the said W. H. to the said E. and at the time of the grievance hereinafter mentioned were and still are wholly in arrear and unpaid, and during the continuance of the said demise, to wit, on the thirty-first of August 1784, certain goods and chattels of the said W. H. more than sufficient to satisfy the said arrears of rent, to wit, of the value of pounds, were on the said demised premises, to wit, at the parish aforesaid, and were then and there liable to be taken by the said E. as a distress for the said arrears of rent, and the sum of pounds of the rent aforesaid, so being in arrear, and unpaid to the said E.; and the said goods and chattels so being on the said demised premises, and being so liable to be taken by the said E. as a distress for the said rent so in arrear and unpaid as aforesaid, he the said defendant, on the thirty-first of August 1784, at the parish aforesaid, in consideration that the said E. at the special instance and request of the said defendant, would authorise him the said defendant, as bailiff of the said Edward, to take the said goods and chattels as a distress for the said rent so in arrear and unpaid as aforesaid, and to secure the same, that the same might be appraised, sold, and disposed of for satisfying the said arrears of rent, and the costs of such distress, if the same goods and chattels should not be replevied by the said W. H. for a reasonable reward to be therefore paid by the said E. to the said defendant, undertook, and then and there faithfully promised the said E. that he the said defendant, as bailiff to the said E. would take the said goods and chattels as a distress for the said rent so in arrear and unpaid as aforesaid, and safely secure the same, that the same might

Declaration against defendant whom plaintiff had employed as a bailiff to distress the goods of his tenant for rent, for taking such little care of the goods distrained, that great part of them were removed and carried off the demised premises on which they had been secured, per quod plaintiff had lost the benefit of the distress.

ASSUMPSIT SPECIAL.—AGAINST BAILIFFS.

be appraised, sold, and disposed of for satisfying the said arrears of rent, and the costs of such distress, if the same goods and chattels should not be replevied by the said W. H. : And the said E. further saith, that he, giving credit to the said promise and undertaking of the said defendant, did then and there authorize the said defendant, as bailiff of him the said E. to take the said goods and chattels as a distress for the said rent so in arrear and unpaid as aforesaid, and secure the same, that the same might be appraised, sold, and disposed of for satisfying the said arrears of rent, and the costs of such distress, if the same goods and chattels should not be replevied by the said W. H. ; and that the said defendant, as bailiff of the said E. by virtue of the authority to him for that purpose given by the said E. as aforesaid, to wit, on the same day and year last aforesaid, at the parish aforesaid, did take the said goods and chattels, on the said demised premises, as a distress for the said arrears of rent : Yet the said defendant, not regarding, &c. but contriving, &c. did not (although often thereto requested) safely secure the said goods and chattels that the same might be appraised, sold, and disposed of for satisfying the said arrears of rent and the costs of such distress, if the same goods and chattels should not be replevied by the said W. H. ; but through the neglect and default of the said defendant and his servants, many of the said goods and chattels of great value, to wit, of the value of pounds, were removed and carried off and from the said demised premises ; and the said E. lost all the benefit and advantage which he ought to have had from the said distress so thereof made by the said defendant as aforesaid, to wit, at the parish aforesaid. (Money had and received ; and common breach.)

 AGAINST FACTORS(a).

Against husband and wife, administratrix of a wife, factor, for the money arising from goods delivered to the intestate by the principal.

COUNTY OF THE CITY OF COVENTRY, to wit. Jonathan Negus complains against Thomas Robinson and Mary his wife, which said M. is *administratrix* of all and singular the goods and chattels, rights and credits, which were of John Brown the younger, deceased, at the time of his death, who died intestate, being, &c. : for that whereas, on the first of June A. D. 1768, at the city aforesaid in the county of the said city, in consideration that the said Jonathan, at the special instance and request of him the said John Brown, had delivered. and caused to be delivered, unto the said John B. deceased, in his lifetime, divers goods, wares, and merchandizes of the said Jonathan of great value, to wit, of the value of seventy pounds of lawful, &c. to be sold and disposed of by the said John B. for the said Jonathan, for a reasonable reward to be therefore paid by the said Jonathan to the said John B. he the said John B. deceased in his lifetime undertook, and to the said

(a) See Assumpsit to *Actum*, post.

said Jonathan then and there faithfully promised, to sell and dispose of the said goods, wares, and merchandizes for the said Jonathan; and to render a reasonable account thereof to the said Jonathan when he the said John B. should be thereunto afterwards requested: And the said Jonathan avers, that the said J. B. deceased in his lifetime, afterwards, to wit, on the said first of June in the said year 1768, at the city aforesaid in the said county of the said city, did dispose of the said goods, wares, and merchandizes for a large sum of money, to wit, for the sum of one hundred pounds, and then and there received the said money for the same: Yet the said J. B. not regarding his said promise and undertaking by him in that behalf made as aforesaid, but contriving and fraudulently intending, &c. the said Jonathan in this respect, did not in his lifetime, nor have the said Thomas and Mary his wife, nor hath either of them, since the decease of the said John B. yet rendered to the said Jonathan any reasonable or other account of the said goods, wares, and merchandizes, (1) or of any part thereof, or paid (1) in the 2d Count, "or of any of them," to the said Jonathan the said sum of money raised by the sale thereof, or any part thereof, although the said J. B. deceased in his lifetime, and the said Thomas and M. his wife, and each of them, since his decease, to wit, on the first of September 1773, at the city aforesaid in the county of the said city, were requested so to do; but to do the same he the said J. B. deceased in his lifetime, and the said T. and M. his wife, and each of them, since the decease of the said J. B. have hitherto wholly refused, and still do refuse. And whereas also afterwards, to wit, on the said first of June in the said A. D. 1768, at the city aforesaid in the said county of the said city, in consideration that the said Jonathan, at the like special instance and request of the said J. B. had delivered and caused to be delivered to the said J. B. in his lifetime, divers other goods, wares, and merchandizes of the said Jonathan, of great value, to wit, of the value of other seventy pounds of like, &c. to be sold and disposed of by the said J. B. for the said Jonathan, he the said J. B. deceased in his lifetime, undertook, and to the said Jonathan then and there faithfully promised, to render to him the said Jonathan a reasonable account of the said last-mentioned goods, wares, and merchandizes (2) when he the said J. B. should be thereunto afterwards requested: Yet the said J. B. not regarding his said last-mentioned promise and undertaking by him in that behalf made as aforesaid, but contriving, &c. the said Jonathan in this respect, did not in his lifetime, nor have the said T. and M. his wife, nor hath either of them, since the decease of the said J. B. yet rendered to the said Jonathan any reasonable or other account of the said last-mentioned goods, wares, and merchandizes, or of any part thereof, (3) although he the said J. B. in his lifetime, and the said T. and M. since the decease of the said John B. to wit, on the said first of September in the said year 1773, and often afterwards, at the city aforesaid in the said county of the said city, were sold and disposed of the goods for a large sum of money." (3) "or of the said monies arising from the said sale thereof, or of any part thereof,"

ASSUMPSIT SPECIAL.—AGAINST FACTORS.

requested so to do; but to render the same to him the said Jonathan he the said J. B. deceased in his lifetime, and the said T. and M. his wife, and each of them, since his decease, have hitherto wholly refused, and the said T. and M. still do refuse. (Counts for goods sold and delivered; *quantum valebant*; money had and received, paid, laid out, and expended.)

F. BULLER.

See the next precedent.

MIDDLESEX, to wit. For that whereas the said plaintiff, For not selling and accounting on the first of September A. D. 1773, at Westminster in the county aforesaid, was indebted to the said defendant in a large sum of money, to wit, in the sum of one hundred pounds. And whereas the said plaintiff afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in the said county, had delivered and caused to be delivered to the said defendants divers goods, wares, and merchandizes, to wit, one hundred coloured prints, one seal's skin, and ten miniature pictures, of the value of five hundred pounds of lawful, &c. *to be sold and disposed of* by the said defendant for the said plaintiff at and for the best price or value that he the said defendant could procure or get for the same, and for him the said defendant to deduct the said money so due from the said plaintiff to the said defendant as aforesaid out of the money arising from the sale of the goods, wares, and merchandizes, and to *account* for and pay to the said plaintiff the residue of the said money arising from the said sale, he the said defendant, in consideration thereof; afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, in the said county, undertook, and then and there faithfully promised the said plaintiff, to sell and dispose of the said goods, wares, and merchandizes for the said plaintiff at and for the best price and value that he the said defendant could procure for the same, and after deducting the said sum of money so due and owing from the said plaintiff to the said defendant out of the money arising from the sale of the said goods, wares, and merchandizes, that he the said defendant would account for and pay the residue of the said money arising from the said sale of the said goods, wares, and merchandizes to the said plaintiff, when he the said defendant should be thereunto afterwards requested: Yet the said defendant, not regarding his aforesaid promise and undertaking, but contriving, &c. the said plaintiff in this behalf, hath not yet sold the said goods, wares, and merchandizes, or paid to the said plaintiff, after deducting the said money due and owing to the said defendant as aforesaid, the residue of the money arising by sale of the said goods, wares, and merchandizes, or any part thereof, or rendered any reasonable or other account for the same, or any part thereof, to the said plaintiff, although so to do he the said defendant afterwards, to wit, on the first of October 1773, at, &c. aforesaid, in the said county, was requested by the said plaintiff; but the said defendant to do this hath hitherto wholly refused, and still doth refuse. (Add a Count same.

as in the 2d in the last precedent according to the margin, except averring that the goods, &c. were sold; Count for money had and received.) Nevertheless the said defendant, not regarding his said *last-mentioned* promise, &c. hath not yet paid the said *last-mentioned* sum of money, or any part thereof.

F. BULLER.

LONDON, to wit. J. G. v. F. P.: for that whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said J. at the special instance and request of the said F. had consigned to the said F. from parts beyond the seas, to wit, from, &c. to the port of London, a certain large quantity of claret, to wit, one hundred and eight hogsheds of claret of great value, to wit, of the value of one thousand pounds of, &c. and had retained and employed the said F. as his factor, to make due entry of the said claret with the collectors of excise at the port of London aforesaid, and to pay the duties imposed on the said claret, and to land the same, and to sell and dispose of the same for the best and greatest price he could obtain for the said claret, for him the said plaintiff, for a certain reasonable reward or commission to be therefore paid to the said defendant in that behalf, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would, within twenty days next after the master or purser of the ship or vessel wherein the said claret should be so imported and brought into this kingdom, should or ought to have made a just and true entry or report, according to the form of the statute in such case made and provided, make due entry of the said claret with the collectors of excise in the port of London aforesaid, and would then and before the landing of the said wine satisfy and pay the duties imposed on the said wine, and would also, within such twenty days, land all the said wine, and would sell and dispose of the said claret for the best and greatest prices he could obtain for the same, and would properly and diligently execute and perform his duty as a factor as aforesaid in that behalf: And the said plaintiff in fact says, that although he the said defendant, in part performance of his said promise and undertaking, did afterwards, to wit, on, &c. at, &c. in, &c. make due entry of divers, to wit, twelve hogsheds, part of the said one hundred and eight hogsheds, and pay the duties thereon imposed, and land the same, according to the form of the statute in such case made and provided, and did afterwards, to wit, on, &c. at, &c. sell and dispose of the same twelve hogsheds of the said one hundred and eight hogsheds, for the best and greatest prices he could obtain for the same: Yet the said defendant, not further regarding his said promise and undertaking so by him made as aforesaid, nor his duty as a factor aforesaid, but contriving, &c. the said plaintiff in this behalf, did not, within twenty days next after the master or purser of the said ship or vessel wherein such claret was imported and brought into this kingdom, make, or cause to be made, a just and true entry or

Declaration by the consignor of wine against his factor, for not paying the duties at the custom-house, per quod the wine was sold, and produced much less than the value.

1st Count states, that plaintiff having retained defendant as his factor to sell the wine, defendant promised to pay the duties before the landing of the wine, and that he sold a part, to wit, fourteen hogsheds, and suffered the remaining eighty-two hogsheds to remain in his majesty's warehouse until they were publicly sold to pay the duties.

report upon oath, according to the form of the statute in such case made and provided, or a due entry of the residue of the said one hundred and eight hogheads of claret with the collector of excise in the port of London aforesaid, where such wine was so imported as aforesaid; and did not then and before the landing of the residue of the said one hundred and eight hogheads of claret, or at any other time before or since, satisfy and pay the duties imposed on such wine, or on any part thereof, and did not, within such twenty days, land the residue of the said one hundred and eight hogheads of claret, or any part thereof, and did not sell and dispose of the same, or of any part thereof, for the best price he could obtain; but on the contrary thereof, wholly neglected and refused so to do, contrary to his said promise and undertaking so by him made as aforesaid; and thereupon, and by force of the statute in such case made and provided, the said ninety-six hogheads of claret, residue as aforesaid, were afterwards, and after the expiration of the said twenty days, conveyed, together with the casks containing the same, to one of his majesty's warehouses for security of the duties due and payable in respect of such wine; and the said defendant afterwards, and after the said ninety-six hogheads of claret were so conveyed to one of his majesty's warehouses as aforesaid, and during the time the same were kept there as such security for the duties thereon imposed, and due and payable in respect thereof as aforesaid, to wit, on, &c. at, &c. sold and disposed of divers, to wit, fourteen hogheads, part of the said ninety-six hogheads, for a very low and under price, and much less than he could and might have obtained of the same: And the said defendant, further neglecting his duty as such factor as aforesaid, permitted and suffered the residue of the said ninety-six hogheads, to wit, eighty-two hogheads of claret, to be kept and detained in his said majesty's warehouse, as such security as aforesaid, for three months then next and more, and until the same were sold and disposed of as hereinafter next mentioned: by reason and means of which said last-mentioned premises, not only the said eighty-two hogheads of claret, residue of the said ninety-six hogheads of claret, were much injured, hurt, damaged, and spoiled, and rendered of much less value, but afterwards, and after the expiration of three months from the time the said wine was so conveyed to such warehouse as aforesaid, the duties imposed on the said eighty-two hogheads of claret, residue of the said ninety-six hogheads of claret, and due and payable in respect thereof, not having been paid or satisfied by the said defendant, to wit, on, &c. at, &c. the said eighty-two hogheads of claret, residue of the said casks, were, according to the statute in such case made and provided, publicly sold to the best bidder for and towards satisfying the said duties, and the costs, charges, and expences attending the conveying of the said eighty-two hogheads of claret, residue as aforesaid, and of the keeping and sale thereof, at a very low and under price, and at and for a much less price and value than the said defendant could and might have got and obtained for the same; by reason and means of all which said premises, he the said plain-
tiff

tiff lost and was deprived of divers great gains and profits, advantages and emoluments, which he otherwise might and could have obtained and acquired from the sale of the said ninety-six hogheads of claret, residue of the said one hundred and eight hogheads of claret as aforesaid, to wit, at, &c. And whereas before the making of the said promise and undertaking hereinafter next-mentioned, to wit, on, &c. the said plaintiff had consigned to him the said defendant from parts beyond the seas, to wit, from, &c. to the port of London, another large quantity of claret of great value, to wit, of the value of two thousand pounds of like lawful money, to wit, at, &c. And whereas, a little before the making of the said promise and undertaking herein after next-mentioned, to wit, on, &c. at, &c. the said last-mentioned claret had been conveyed, together with the casks containing the same, into one of his majesty's warehouses in the port of London, for security of the duties unpaid upon the said last-mentioned claret, and due and payable in respect thereof: and thereupon, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had retained and employed him the said defendant as his factor to sell and dispose of the said last-mentioned claret for the best and greatest prices he could obtain for the same, for him the said plaintiff, for a certain reasonable commission or reward to be therefore paid to the said defendant in that behalf, he the said defendant undertook, &c. the said plaintiff, that he the said defendant would, within three months from the time the said last-mentioned wine had been so conveyed into the said warehouse as last aforesaid, pay and satisfy the duties imposed on the said last-mentioned wine, and due and payable in respect thereof (1): Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, did not, within three months from the time the said last-mentioned wine had been so conveyed into the said last-mentioned warehouse as aforesaid, pay and satisfy the duties imposed upon such last-mentioned wine, and due and payable in respect thereof (2); but on the contrary thereof, wholly neglected and omitted so to do, and therein failed and made default, contrary to the form and effect of his said last-mentioned promise and undertaking so by him made as aforesaid; by reason and means of all which said last-mentioned premises, afterwards, and after the expiration of the said three months from the time the said last-mentioned wine was so conveyed to such warehouse as last aforesaid, to wit, on, &c. the said last-mentioned eighty-two hogheads of wine, and the said last-mentioned claret, were, according to the form of the statute in such case made and provided, publicly sold to the best, &c. &c. (as in the 1st Count to the end.) (3) And whereas also before the making of, &c. &c. (3d Count same as the 2d, only insert what is in margin) (4) And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff

ad Count states, that the plaintiff having consigned eighty-two hogheads of claret, the defendant undertook to pay the duties, but did not; by reason of which they were publicly sold to pay the duties.

(In the third Count,)

(1) "or gave notice to the said plaintiff, that he the said defendant would not pay and satisfy the duties so imposed upon such last-mentioned claret, and due and payable in respect thereof so that the said plaintiff might cause the same to be paid and satisfied."

(In 3d Count,)

(2) "nor gave notice to the said plaintiff, that he the said defendant would not pay and satisfy the same, in order that the said plaintiff

might have paid and satisfied the same;" (3) 3d Count same as 2d, only stating, that if the defendant would not pay the duty he promised to give the plaintiff notice thereof." (4) 4th Count stating, that the plaintiff employed the defendant to sell fourteen hogheads of wine for the best price he could get; that defendant sold the wine, but sold them for a less price than he could have gotten.

tiff, at the like special instance and request of the said defendant, had retained and employed him the said defendant as his factor to sell and dispose of fourteen hogheads of other claret for the best and greatest prices he could obtain for the same, for him the said plaintiff, for a certain reasonable commission or reward to be therefore paid to him the said defendant in that behalf, he the said defendant undertook, &c. that he the said defendant would sell and dispose of the said fourteen hogheads of claret for the best and greatest prices that could be obtained for the same: Yet the said defendant, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, did not sell and dispose of the said fourteen hogheads of claret for the best and greatest price that could be obtained for them; but on the contrary thereof, sold and disposed of the said fourteen hogheads of claret at a very low and under price, and at and for a much less price and value thereof, and that could and might have been had and obtained for the same, to wit, for the sum of twenty-eight pounds; by reason and means of which said last-mentioned premises, he the said defendant lost and was deprived of divers great gains, profits, and emoluments which he otherwise might and could have acquired and obtained from the sale of the said last-mentioned fourteen hogheads of claret, to wit, at, &c. (Add the money Counts; an account stated; and common breach to the last Counts: damages five thousand pounds.)

Drawn by MR. GRAHAM.

Against a factor not rendering an account.

LONDON, ff. John Gord and William Goring: for that whereas, on, &c. in consideration that said J. at the special instance and request of the said W. had delivered and caused to be delivered to said W. divers goods and merchandizes of said J. of the value of thirty pounds of lawful, &c. to be sold and disposed of by the said W. for the said J. he the said W. undertook, &c. to sell and dispose of said goods, &c. for said J. and to render a reasonable account thereof to the said J. when he the said W. should be thereto afterwards requested: And said J. avers, that said W. afterwards, to wit, on, &c. did sell and dispose of said goods, &c. for divers sums of money amounting in the whole to a large sum, to wit, the sum of, &c.: Yet said plaintiff, not, &c. but, &c. hath not yet rendered to the said J. any reasonable or other account of said goods, &c. or any part thereof (although, &c.); but, &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that said J. at the special instance and request, &c. had caused to be delivered to said W. divers other goods, &c. of the said J. to the value of twenty pounds, to be sold by the said W. to his the said W.'s customers in the way of his trade, he the said W. undertook, &c. to account and pay for them as the same should be sold by said W.: And said J. avers, that he said W. afterwards, to wit, on, &c. sold said last-mentioned goods, &c.: Yet, &c. hath not accounted or paid for said goods, &c. so by him sold as aforesaid, or any part thereof (although often requested so to do); but he, &c. (Goods sold, &c.; money had and received; and common conclusion to the three last Counts.)

AGAINST

AGAINST OWNERS AND MASTERS OF SHIPS, AND SHIPWRIGHTS.

LONDON, *J.* Joseph Yates complains of John Hall being, &c. : for that whereas, at the time of the capture hereafter next-mentioned, to wit, on, &c. and before, there was an open war between our lord George the Third, then and still being king of Great Brit.in, and the United States of America. And whereas the said J. Y. at the time of the capture hereafter next mentioned, to wit, on, &c. was a seaman and served as a mariner on board a certain sloop or vessel called the Saville, the property of the said J. H. a subject of our said lord the king, and of certain other persons unknown to the said J. Y. at and for the wages of four pounds by the month, to be therefore paid to him during such his service. And whereas, during such open war as aforesaid; and whilst the said J. Y. was such seaman, and served as mariner on board the said sloop or vessel called, &c. to wit, on, &c. one Edward Macatter, then being a subject of the said United States of North America, and commander of a certain cutter called the Black Princess, then cruising on the high seas to take the ships and vessels of the subjects of our lord the king, did upon the high seas attack, conquer, and take the said sloop or vessel called, &c. so being the property of the said J. H. and the said other persons as aforesaid, whereof one John English was then master, and then proceeding with a certain cargo laden therein upon a certain voyage; and thereupon afterwards, to wit, on, &c. in consideration that the said J. Y. at the special instance and request of the said J. H. would become one of the hostages to the said E. M. for securing the payment of a certain large sum of money then and there agreed by the said J. E. as the master of the said sloop or vessel called, &c. to be paid for the ransom thereof with her said cargo, he the said J. H. undertook, and then and there faithfully promised the said J. Y. that he the said J. H. would pay to the said J. Y. the like wages of four pounds for each and every month that he should be detained as hostage as aforesaid, when he the said J. H. should be thereto afterwards requested: And the said J. Y. in fact says, that he the said J. Y. confiding in the said promise and undertaking of the said J. H. and in hopes of his faithful performance thereof, did afterwards, to wit, on, &c. become one of the hostages of the said E. M. for the purposes before-mentioned, and was detained in custody as such hostage for a long time, to wit, for the space of three years and ten months then next following, whereof the said J. H. afterwards, to wit, on, &c. had notice; and by reason thereof, and according to his said promise and undertaking, became liable to pay, and ought to have paid to the said J. Y. the sum of one hundred and eighty-four pounds of lawful, &c. being at and after the rate of four pounds for each and every month that he was so detained as such hostage as aforesaid.

And

Declaration by a sailor against the owners of a ship which was taken by the enemy and ransomed, and plaintiff was taken as an hostage, and remained in confinement in France a long time as such; defendant refused to pay him his wages during his confinement.

2d Count.

And whereas also the said J. Y. at the time of the capture hereafter next mentioned, and whilst there was such open war as aforesaid, to wit, on, &c. was a seaman, and served on board a certain other sloop or vessel called, &c. then the property, &c. (as in 1st Count, only stating the promise to be to pay plaintiff so much money as he should reasonably deserve to have for the time he should be detained in custody as such hostage as last aforesaid; then aver, that plaintiff, confiding in defendant's promise, became a hostage, and was detained for three years and ten months then next following,) and that he therefore reasonably deserved to have a large sum of money, to wit, the sum of one hundred and eighty-four pounds of like lawful, &c. to wit, at, &c.; of all which said last-mentioned premises the said J. H. afterwards, to wit, on, &c. there had notice; and by reason thereof, and according to his said last-mentioned promise and undertaking, became liable to pay, and ought to have paid to the said J. Y. the said last-mentioned sum of money. And whereas, &c. &c. (state that the plaintiff was a mariner on board the defendant's ship, and the capture of it, as before.)

3d Count.

4th Count,
that the owners
should pay
4000l. to J. T.
E. M.'s agent
at Dunkirk,
within sixty
days.

And whereas afterwards, to wit, on, &c. it was agreed by and between the said last-mentioned E. M. and the said J. E. as such master of the said last-mentioned sloop or vessel called, &c. and on the behalf of the owners thereof, and of the cargo laden therein, that the said last-mentioned E. M. should ransom and set at liberty the said last-mentioned ship or vessel called, &c. and the cargo laden therein; and the owners thereof should for such ransom pay to the order of one J. T. his the said last-mentioned E. M.'s agent at Dunkirk in the kingdom of France, a large sum of money, to wit, the sum of four thousand pounds sterling of lawful, &c. within sixty days next after the day and year last-mentioned; and thereupon afterwards, to wit, at, &c. in consideration that the said J. Y. at the special instance and request of the said J. H. would become one of the hostages to the said last-mentioned E. M. for securing the due payment of the said four thousand pounds as aforesaid, he the said J. H. undertook, and then and there faithfully promised the said J. Y. that he the said J. H. would pay, or cause to be paid, the sum of four thousand pounds to the order of the said J. T. within the said space of sixty days, so that the said J. Y. might, on payment thereof, be set at liberty by the said last-mentioned E. M. from all confinement, by reason of his becoming such hostage as last aforesaid: And the said J. Y. in fact says, that he the said J. Y. confiding, &c. of the said J. H. as last aforesaid, and in hopes of his faithful, &c. did afterwards, to wit, on, &c. become one of the hostages to the said last-mentioned E. M. for the purpose last-mentioned; and the said E. M. did then and there ransom and set at liberty the said last-mentioned ship or vessel called, &c. with her said cargo; whereof the said J. H. afterwards, to wit, on, &c. had notice: Nevertheless the said J. H. not regarding his said last-mentioned promise and undertaking, but contriving, &c. did not pay, or cause to be paid, the said sum of four thousand pounds to the order of the said J. T. within the said space of sixty days, but wholly neglected and refused so to do;

by

by reason whereof the said J. Y. was detained in custody, as such hostage as last aforesaid, for a much longer time than the said sixty days, to wit, from the time of his becoming such hostage as last aforesaid until the twenty-seventh day of August 1783; and the said J. Y. was put to great trouble, inconvenience, and expence, to wit, the expence of one hundred pounds of like lawful, &c. to wit, at, &c. &c. And whereas also the said J. H. afterwards, to wit, on, &c. was indebted to the said J. Y. in three hundred pounds of, &c. for the wages of the said J. Y. before that time due and payable from the said J. H. for his service done and performed by him as a sailer and mariner in, of, and belonging to and on board a certain other sloop or vessel called, &c. at the special instance and request, and on the retainer of the said J. H.; and being so indebted, &c. &c. (*Quantum meruit.*)

DEVONSHIRE, ff. John Collins complains of Henry Studd, being, &c. : for that whereas the said Henry, before and at the time of making his promise and undertaking hereafter next mentioned, to wit, on, &c. was the owner of a certain ship or vessel employed in the British fishery on the banks of Newfoundland, in parts beyond the seas, to wit, at, &c. ; and the said Henry, being such owner as aforesaid, afterwards, to wit, at, &c. in consideration that the said J. at the special instance and request of the said Henry, had agreed to serve in the said Henry's employ in Newfoundland aforesaid as a youngster, and to do anything required of him for the benefit of the said employ during the two summers and winter then next ensuing (that is to say, during the summers of the two several years 1784 and 1785 and the intermediate winter), without neglect, he the said Henry undertook, and then and there faithfully promised the said J. to pay him as wages for such his service the sum of fifteen pounds of lawful, &c. and that the balance of his account on that occasion should be paid in bills of exchange : And the said J. in fact saith, that he, confiding in the said promise and undertaking of the said H. did serve in the said H.'s employ in N. aforesaid, in the capacity aforesaid, and did every thing required of him for the benefit of the said employ during the two said several summers and winter aforesaid without neglect : And the said J. further saith, that at the expiration of his said service and employ, the balance of his account on that account amounted to a large sum of money, to wit, the sum of seven pounds ten shillings of lawful, &c. ; of all which said several premises the said H. afterwards, to wit, on, &c. had notice : Yet the said H. not regarding, &c. but contriving, &c. hath not yet paid him the balance of his account, or any part thereof, in bills of exchange or otherwise (although to perform his said promise and undertaking so by him made in this behalf as aforesaid he the said H. was afterwards, to wit, on, &c. and often since, at, &c. requested by the said J.) ; but he to do this hath hitherto wholly refused, and still refuses so to do. And whereas heretofore, to wit, on, &c. in, &c. at, &c. in consideration that the said J. at the like special instance and request of the said H. had

Declaration against the owner of a ship, for not paying a boy his wages for serving on board the said ship, and also for keeping and detaining the boy's chest and clothes after the expiration of the time for which he was engaged to serve.

ad Count, for detaining chest, &c. after time expired, before

(1) "other"
(2) "other"

(3) "last-men-
tioned"

(4) "when he
should be there-
so afterwards
requested;"

(5) "last men-
tioned"

(6) "last
mentioned"

3d Count.

before then entered into the service and employ of the said Henry in Newfoundland aforesaid, and had agreed to serve in the said Henry's employ there for a certain time before then appointed and agreed upon by and between the said J. and the said Henry, and not then expired, and had also, at the like instance and request of the said Henry, before then deposited with and in the custody of the said Henry, at, &c. a certain (1) chest, and also certain (2) wearing-apparel, bedding, working-tools, and other goods and chattels of the said J. being of a large value, to wit, of the value of twenty pounds of, &c. to be taken and carried away by him the said J. at the expiration of the time appointed and agreed upon for his said service and employ, he the said Henry undertook, and then and there faithfully promised the said J. that he the said Henry would permit and suffer the said J. to take and carry away the said (3) chest, wearing-apparel, bedding, working-tools, goods, and chattels, (4) at the expiration of the time appointed and agreed upon for his said service and employ; and although the time appointed and agreed for his said service and employ is long since elapsed; and although the said J. afterwards, and after the expiration of the said time, to wit, on, &c. at, &c. requested the said H. to permit and suffer him the said J. to take and carry away the said chest, wearing-apparel, &c.: Yet the said H. not regarding, &c. but contriving, &c. did not nor would, at the said time when he was so requested as aforesaid, permit or suffer, nor hath he at any time since hitherto permitted or suffered, the said J. to take and carry the said (5) chest, wearing-apparel, &c. or any of them, but hath hitherto wholly refused so to do, and on the contrary thereof wholly hindered and prevented the said J. from taking or carrying away the same, and hath kept and detained, and still keeps and detains the same from the said J.; by means of which said several (6) premises, he the said J. hath not only lost and been deprived of his said chest, &c. and of all profit, benefit, and advantage that would otherwise have arisen and accrued to him from the same, but hath thereby been put to great labour, trouble, and expence in and about his passage from N. aforesaid to England, in order to obtain a restitution of or satisfaction for his said chest, &c. to wit, at, &c. And whereas afterwards, to wit, on, &c. at, &c. in consideration that the said J. at the like special instance and request of the said H. had, &c. &c. &c. (Go on with this Count same as the 2d Count, omitting what is in *Italic*, and inserting what is in *margin*.)

S. MARRYATT,

Declaration a-
gainst the owners
of a ship, for
discharging
plaintiff (who
was captain) whilst he was abroad, and not paying him his wages and a certain allowance called table-money; and also for seizing plaintiff's books and papers, and particularly a pass called a Mediterranean pass.

LONDON, ff. Christopher Collins v. Thomas York. For that whereas heretofore, to wit, on, &c. at, &c. in consideration that the said Christopher, at the special instance and request of the said Thomas, had then and there agreed with the said Thomas

to go and serve as captain in and on board a certain ship or vessel (1) called, &c. whereof the said Thomas was then and there owner, then lying and being in the port of L. aforesaid, during a certain (2) voyage from the said port of L. to, &c. and from thence, to wit, back again to the said port of L. for certain wages, (3) and a certain other allowance called *table-money*, that is to say, wages, at and after the rate of six pounds six shillings of lawful money of Great Britain for each and every month during the said voyage, and one shilling a day for the said allowance called *table-money* during the said voyage, to be therefore paid by the said Thomas to the said Christopher, he the said Thomas then and there, to wit, on, &c. undertook, &c. the said Christopher, that he the said Thomas would continue the said Christopher in and on board the said (4) ship or vessel, as such captain thereof as aforesaid, during the whole of the said (5) voyage, and would pay and allow him such wages and allowance as (6) aforesaid, for and during the said voyage: And he the said Christopher avers, that although he the said Christopher did go and proceed in and on board the said (7) ship or vessel, as such captain thereof as aforesaid, part of the said (8) voyage, that is to say, from the port of L. aforesaid to, &c. and was then and there ready and willing to go and proceed in and on board the said (9) ship or vessel, as such captain thereof as aforesaid, the remainder of the said (10) voyage, that is to say, from, &c. back again to the port of L. aforesaid: Yet the said Thomas, not regarding his said promise and undertaking so by him made as (11) aforesaid, but contriving, &c. the said Christopher in this behalf, did not nor would take the said Christopher, or suffer or permit him to go and proceed in and on board of or with the said (12) ship or vessel, as such captain thereof as aforesaid, the remainder of the said (13) voyage (although often requested so to do); but on the contrary thereof, afterwards, and whilst the said (14) ship or vessel was at S. aforesaid, to wit, on, &c. wrongfully and injuriously, without the licence and consent and against the will of the said Christopher, dismissed and discharged him the said Christopher from the said (15) ship or vessel, and from the command thereof, and seized and took, and caused and procured the same to be seized and taken from and out of the possession of him the said Christopher, together with all and every the books and papers of the said ship, and the property of the said Christopher as such captain thereof as aforesaid, and particularly a certain pass, called a *Mediterranean pass*, for the said ship, of a large value, to wit, of the value of five hundred pounds of lawful money of Great Britain, before then obtained by the said Christopher from the admiralty of this kingdom, and then and there, and always afterwards, refused to suffer and permit him the said Christopher to go and proceed in and on board of the said (16) ship or vessel the remainder of the said (17) voyage, or to any longer serve in and on board the same, as such captain thereof as aforesaid, nor hath he the said Thomas, at any time since the making of his said (18) promise and undertaking, hitherto paid and allowed the said C. such wages and allowance as (19) aforesaid,

(1) "that is to say, a certain ship or vessel"

(2) "other"

(3) "that is to say, wages"

(4) "last-mentioned"

(5) "last-mentioned"

(6) "last"

(7) "last-mentioned"

(8) "last-mentioned"

(9) "last-mentioned"

(10) "last-mentioned"

(11) "last"

(12) "last-mentioned"

(13) "last-mentioned"

(14) "last-mentioned"

(15) "last-mentioned"

(16) "last-mentioned"

(17) "last-mentioned"

(18) "last-mentioned"

(19) "last"

OR (19) "last"

or any part thereof, but hath hitherto wholly refused and neglected so to do; by means of which said several premises he the said C. hath wholly lost and been deprived of all the benefits, profits and advantage which would otherwise have arisen and accrued to him from continuing to serve, as captain in and on board the said ship or vessel, and from going and proceeding therein during the remainder of her aforesaid voyage, and was also left and detained at S. aforesaid for a long space of time, and until he could procure a passage home, and was forced and obliged to lay out and expend a large sum of money; to wit, the sum of forty pounds for such passage, and in and about his necessary expences and subsistence whilst abroad, *and he hath also lost and been deprived of his said books and papers, and of all benefit and advantage that would have arisen and accrued to him from the same and the possession thereof, and particularly of the said pass for the Mediterranean, to wit, at, &c.* And whereas, &c. &c. (2d Count same as the 1st, omitting

3d Count, vessel bound for, &c. where directions were to be given for the future conduct of the captain, and to be continued as well homewards as outwards.

what is in Italic, and inserting what is in margin.) And whereas heretofore, to wit, on, &c. in consideration that the said C. at the like, &c. of the said T. would go and serve as captain in and on board a certain other ship or vessel called, &c. whereof the said T. was then and there owner, and which said last-mentioned ship or vessel was then lying and being in the port of L. aforesaid, and bound from thence for, &c. (where directions were to be given as to the future conduct of the captain thereof), for certain wages, *and a certain other allowance called table-money, that is to say, wages, at and after the rate of six pounds six shillings of like lawful money of Great Britain, by the month, and one shilling a-day for the said allowance called, &c.* to be therefore paid *and allowed* by the said Thomas to the said Christopher, he the said Thomas, to wit, on, &c. undertook, &c. the said Christopher, that the said last-mentioned ship or vessel should and would not only go and sail from the said port of L. to H. aforesaid, but back again from, &c. to the said port of L.; likewise, that he the said Christopher should and would be continued in and on board the said ship or vessel, as such captain thereof as aforesaid, as well homewards and back again from, &c. to the said port of L. as outwards, at and for such wages *and allowance* as last aforesaid: And the said C. avers, that although he the said C. confiding, &c. did go, proceed, and serve in and on board of the said last-mentioned ship or vessel, as such captain thereof as aforesaid, from the port of L. to, &c. and was then and there ready and willing to continue in and on board the said last-mentioned ship or vessel, and to serve therein as such captain thereof, as homewards; and back again from, &c. to the port of L. aforesaid; and although he could and might and would have so done, had he not been prevented as is hereafter mentioned: Yet the said C. in fact further saith, that the said T. did not regard his said promise and undertaking so by him made as last aforesaid, but thereby craftily and subtilly deceived the said Christopher in this, to wit, that the said last-mentioned ship or vessel did not sail or return back again, nor was the same suffered or permitted to sail and

return

return back again from, &c. aforesaid to the said port of L. nor was he the said Christopher continued in and on board the same as such captain thereof as aforesaid, as well homewards and back again from, &c. to the said port of L. as outwards, at and for such wages and allowance as last aforesaid; but on the contrary, the said C. in fact saith, that he the said Thomas kept and retained, and caused and procured the said last-mentioned ship or vessel to be kept and retained at, &c.; and afterwards, whilst the said last-mentioned ship or vessel was at, &c. to wit, on, &c. wrongfully and injuriously, and without the licence and consent, and against the will of the said C. dismissed, &c. &c. &c. (Conclude same as 1st Count.) And whereas, &c. &c. (Same as the 3d Count, only omitting what is in Italic: 5th Count, for the service of the said C. done, performed, and bestowed, as captain: 6th Count, for other work and labour: 7th Count, goods sold and delivered: 8th Count, money laid out, expended, and paid: 9th Count, money had and received; account stated; and common conclusion.)

V. LAWES.

LONDON, ff. F. H. S. J. C. and William C. complain Declaration, of R. B. being, &c.: for that whereas the said F. H. J. and W. plaintiffs were heretofore, to wit, on, &c. at, &c. were lawfully possessed, to wit, as owners and proprietors thereof, of a certain ship or vessel the owners of a ship which wanted formerly called the Hope, but now, &c. then being in a certain defendant was a dock of the said R. to wit, at Limehouse in the county of Middlesex, and which said ship or vessel was then and there intended to be sent upon a certain voyage as soon as possible, but then and there stood in need of certain repairs and additions to the same, to wit, certain upper works to the same, and otherwise repaired; and the said Robert then and there, and at the time of the making the six several promises hereafter next mentioned, was a shipwright and shipbuilder; and thereupon afterwards, to wit, on, &c. in consideration that the said F. H. J. and W. at the special instance and request of the said R. would employ him the said R. (so then and there being a shipwright and shipbuilder as aforesaid) to make such repairs and additions to the said ship or vessel as aforesaid for them the said F. H. J. and W. (as such owners and proprietors of the said ship or vessel as aforesaid), he the said R. undertook, &c. the said F. H. J. and W. to make the said repairs and additions in about thirty days then next following, and to complete the same in the best manner and upon the most reasonable terms, upon the completion thereof to redeliver the ship or vessel to the said F. H. J. and W. from and out of his aforesaid dock so repaired as aforesaid, and safely and carefully: And the said F. H. J. and W. in fact further say, that they, confiding, &c. of the said R. did afterwards, to wit, on, &c. employ him the said R. to make such repairs and additions to the said ship or vessel as aforesaid; and although the said R. did afterwards make such repairs and additions, and did afterwards redeliver the said ship or vessel to the said F. H. J. and W. from and out of his aforesaid dock: Yet the said R. not regarding, &c. but contriving,

ing, &c. the said F. H. J. and W. in this behalf, did not make such repairs and additions to the said ship or vessel as aforesaid in *about thirty days* next after the making of his said promise and undertaking, nor complete the same in the best manner and upon the most reasonable terms, nor upon the completion thereof redeliver the said ship or vessel to the said F. H. J. and W. from and out of his aforesaid dock, so repaired as aforesaid, and safely and carefully (although to perform his said promise and undertaking he the said R. was frequently requested by the said F. H. J. and W. to wit, at, &c.); but on the contrary, the said F. H. J. and W. in fact further say, that the said Robert did not make such repairs and additions to the said ship or vessel as aforesaid, nor were the same completed or made until the end and expiration of a much larger space of time than *thirty days* from the time of the making of such promise and undertaking, to wit, until *three months* over and beyond thirty days from the making of such promise and undertaking; and did also complete the same, and particularly the said sheathing of the said ship or vessel, in a very bad, careless, negligent, improper, and unworkmanlike manner, and so as to render the said ship or vessel leaky, unsound, and unfit for sea; and did also do and perform such repairs and additions to the said ship or vessel upon very unreasonable and extravagant terms, and so as to incur and put the said F. H. J. and W. to much larger and greater expences than were necessary or reasonable; and in the redelivery of the said ship or vessel to the said F. H. J. and W. from and out of his said dock as aforesaid, to wit, on, &c. by himself and his servants, behaved in so negligent and unskilful manner, and took so little and such bad care of the said ship or vessel, that the said ship or vessel was, in the said redelivery and removal thereof from and out of the said dock, and for want of due and proper care and skill on that occasion, greatly shaken, bulged, disjointed, broken, damaged, and otherwise injured; and in consequence of her being so removed and delivered from and out of the said dock as aforesaid, and of the damage so done to her on that occasion as aforesaid, and of the unskilful and improper manner in which she was so sheathed as aforesaid, the said ship or vessel shipped and took in water in such abundance and in such quantities, and became and was so leaky, unsound, and damaged, as to be altogether unfit for and wholly disabled from proceeding to sea on her aforesaid voyage, or on any other voyage whatsoever; whereby, and by reason of which said several premises, the said F. H. J. and W. were forced and obliged to unload the said ship or vessel of certain stores and provisions before then loaden and put on board her for her said intended voyage, and to take and convey the said ship or vessel back again into the said dock of the said R. and afterwards to remove her into certain other docks; in one of which said docks, to wit, in a certain dock called Greenland Dock, the said ship or vessel still remains and continues, so unsound, damaged, and unfit for sea as aforesaid, and of little or no value whatsoever, as the same will always hereafter be,

be, remain, and continue; whereby, and by reason of which said several premises, the said ship or vessel was hindered and prevented from performing her said intended voyage, and wholly lost the same; and the said F. H. J. and W. also thereby, and by reason of the several other premises aforesaid, lost and were deprived, and have lost and been deprived, of all benefit and advantage that would have arisen and accrued to them from the said voyage, as well homeward as outward, and from all future voyages which the said ship or vessel, and certain insurances upon the said ship and goods so intended to be carried in her as aforesaid, and theretofore made by the said F. H. J. and W. at a great and considerable expence, under the idea of her going and performing her said intended voyage, became and were altogether ineffectual and of no avail; and the said stores and goods so by them provided for her said outward-bound voyage as aforesaid, remained and were, and have been and still are, left in and upon their hands unfold and undisposed of, and they have in consequence thereof, and of the said goods not being sent upon the said intended voyage, been at a great expence in the removal thereof from certain places to which the same had been and were conveyed for the purpose of being loaded and put on board the said ship or vessel, and the said stores and provisions were greatly wetted, damaged, and injured, and many of them were wholly spoiled; and the said F. H. J. and W. have also been and were forced and obliged to lay out and expend a large sum of money in and about the taking of the said ship or vessel into dock again as aforesaid, and there taking care of the same, and will hereafter be obliged to bear and be at further expence in and about the future care and removal of the said ship, and also have been and still will be considerably injured and damaged by not receiving, within the time in which the same would otherwise have arrived, a certain other cargo of goods and merchandizes ordered and contracted for by them the said F. H. J. and W. to be brought home in their said ship or vessel, and by being obliged to accept of and take such cargo pursuant to their contract for the same, the market and value of such cargo being now considerably reduced and lowered, and so likely to continue, to wit, at, &c.

(2d Count varies from the 1st only in respect of the time in which the repairs were to be done, the promise being to make the repairs and additions in six weeks then next following at the furthest, and in the alterations made in the parts in *Italic*, so as to correspond with the *assumpsit*.) And whereas, &c. &c. (The 3d Count is like the 2d Count to the promise, which in this Count is to make and complete the said repairs and additions in the best and most expeditious manner, and upon the most reasonable terms; and that, in order to expedite the same, he would employ and keep employed on such repairs and additions, until the same were completed, thirty shipwrights; and that upon the completion thereof he would redeliver the said last mentioned ship or vessel to the said plaintiffs from and out of his aforesaid dock so repaired as aforesaid, and safely and securely :) And the said plaintiffs in fact further say, that they, confiding in the said last-mentioned

Breach to 3d
Count.

promise and undertaking of the said defendant, did afterwards, to wit, on, &c. employ him the said defendant to make such repairs and additions to the said last-mentioned ship or vessel as aforesaid; and although the said defendant did afterwards make such repairs and additions, and did afterwards redeliver the said last-mentioned ship or vessel to the said plaintiffs from and out of his aforesaid dock: Yet the said defendant, not regarding his said promise and undertaking so by him made as last aforesaid, but contriving, &c. the said plaintiffs in this behalf, did not make or complete such repairs and additions to the said last-mentioned ship or vessel in the best and most expeditious manner, and upon the most reasonable terms, nor did he employ, or keep employed thereon, thirty shipwrights, nor did he, upon the completion thereof, redeliver the said last-mentioned ship or vessel to the said plaintiffs from and out of his aforesaid dock, so repaired as aforesaid, and safely and securely (although to perform his said last-mentioned promise and undertaking he the said defendant was frequently requested by the said plaintiffs, to wit, at, &c.); but on the contrary, the said plaintiffs in fact further say, that the said defendant, in and upon such repairs and additions to the said last-mentioned ship or vessel, did employ only a few, and a much less number of shipwrights than thirty, and did do and perform such repairs and additions in a very dilatory manner, and so as to occasion frequent and unnecessary delays and loss of time; and did also complete the same, and particularly the sheathing, in, &c. &c. &c. (as in the preceding Counts to the end). And

4th Count.

whereas, &c. (The 4th Count is also like the preceding ones to the promise, which is, to make the said repairs and additions within a reasonable space of time then next following, and to do and perform the same in a proper and workmanlike manner, and upon reasonable and frugal terms; and upon the completion thereof to redeliver the same to the said plaintiffs from and out of his aforesaid dock, so repaired as aforesaid, and safely and carefully, &c.; then aver) that the plaintiffs, confiding in the defendant's promise, employed him to do the repairs; and that although he did then and there redeliver the said ship (as before): Yet the said defendant, not regarding, &c. but contriving, &c. did not make such repairs and additions to the said last-mentioned ship or vessel as aforesaid, within a reasonable space of time, nor do and perform the same in a proper and workmanlike manner, nor upon reasonable and frugal terms, nor, upon the completion thereof, redeliver the said last-mentioned ship or vessel to the said plaintiffs from and out of his aforesaid dock, so repaired, and safely and carefully (although to perform his said last-mentioned promise and undertaking he the said defendant was frequently by the said plaintiffs requested, to wit, at, &c.); but on the contrary, the said plaintiffs in fact further say, that the said defendant did not make such repairs and additions to the said last-mentioned ship or vessel as aforesaid, nor were the same completed and made until the end and expiration of a much longer and greater space of time than a reasonable space of time for that purpose, to wit, until three months over and above

Breach to 4th
Count.

a rea-

A reasonable space of time for the making and completion of such repairs and additions; and did also do and perform the same, and particularly the sheathing, &c. (as in the foregoing Counts). And whereas heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the like special instance and request of the said defendant, had then and there retained and employed him the said defendant, so then and there being a shipwright and ship-builder as aforesaid, to make certain repairs and additions, *consisting of sheathing, upper works, and other particulars*, to a certain other ship or vessel of them the said plaintiffs, and had also undertaken and faithfully promised the said defendant to pay him for such repairs and additions, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, to make such repairs and additions to the said last-mentioned ship or vessel within a reasonable space of time then next following, and also to do and perform the same in a proper and workmanlike manner, and upon the completion thereof to redeliver the said last-mentioned ship or vessel to the said plaintiffs, so repaired as aforesaid, and fit for sea: And the said plaintiffs in fact further say, that although the said defendant afterwards, to wit, on, &c. had and received the said last-mentioned ship or vessel of them the said plaintiffs for the purpose of making such repairs and additions to the same as aforesaid; and although the said defendant did afterwards repair and make such additions to, and afterwards redeliver the said last-mentioned ship or vessel to the said plaintiffs: Yet the said defendant, not regarding, &c. but contriving, &c. did not make such repairs and additions to the said last-mentioned ship or vessel as aforesaid within a reasonable space of time for that purpose, nor do and perform the same in a workmanlike manner, nor upon the completion thereof redeliver the said ship or vessel to the said plaintiffs, so repaired, and fit and ready for sea (although to perform, &c.); but on the contrary, the said plaintiffs in fact further say, that the said defendant did not make such repairs and additions to the said last-mentioned ship or vessel as aforesaid until a long space of time, to wit, for the space of three months over and above a reasonable space of time for the making of such repairs and additions to the same as last aforesaid, and did also do and perform the same, particularly the said sheathing of the said last-mentioned ship or vessel, in a very bad, careless, negligent, improper, and unworkmanlike manner, and so as to render the said last-mentioned ship or vessel leaky and unsound, and altogether unable and unfit for sea; and afterwards, to wit, on, &c. returned and redelivered the said last-mentioned ship or vessel unto them the said plaintiffs, so leaky, unsound, damaged, and unfit for sea as aforesaid; whereby, and by reason of which said several premises, the said plaintiffs lost and were deprived of all profit, benefit, and advantage that would have arisen and accrued to them from a certain voyage which the said ship or vessel would otherwise have gone and made; and the said ship or vessel hath become and is of no use or value whatsoever unto them

6th Count.

the said defendants, to wit, at, &c. And whereas, &c. (same as the 5th Count, omitting what is in *Italic*, and making the promise, "*to do and make the repairs in a workmanlike manner;*" and assigning the breach accordingly: common Counts; account stated; and breach to the three last Counts; damages five thousand pounds.)

V. LAWES.

Declaration against the mate of a ship, for neglect of duty in taking care of goods on board the ship, by suffering some to be spoiled and others lost.

LONDON, *ff.* John Hudson complains of Richard Siffons, being in the custody of the marshal, &c.: for that whereas, on the first day of July in the year of Our Lord 1734, he the said John was master of a certain ship called the *Industry*, then about to make a certain voyage in the same ship from the port of London to Norway, and from Norway to Faro, in parts beyond the seas, and back again to the said port of London, that is to say, at London aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap: And whereas the said John, on the same day and year, at London aforesaid, in the parish and ward aforesaid, at the special instance and request of the said Richard, had retained him the said Richard to serve him as mate on board the said ship, for and during the said voyage, for a reasonable reward to be paid him by the said John for the same; in consideration whereof, the aforesaid Richard then and there undertook, and to the said John faithfully promised, to serve the said John as mate on board the said ship diligently, faithfully, and honestly during the aforesaid voyage; and although the said John afterwards made and performed the said voyage in the said ship; and although the said Richard, in pursuance of the said retaining and his undertaking aforesaid, afterwards, the same day and year, at London aforesaid, in the parish and ward aforesaid, entered into the service of the said John on board the said ship, to serve him as chief mate on board the same ship, and proceeded on board the said ship in the voyage so as aforesaid made; and although the aforesaid Richard, during that voyage, that is to say, on the twentieth day of November in the year aforesaid, at Faro aforesaid, being in parts beyond the seas, received into his care and custody, as mate of the said ship as aforesaid, divers goods and merchandizes put on board the said ship, for and on the account of divers merchants residing in London aforesaid, to be transported in the aforesaid ship from thence unto the said port of London, for a reasonable freight to be paid to the said John for the same: Nevertheless the aforesaid Richard, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending the said John in this behalf craftily and subtilly to deceive and defraud, did not diligently and faithfully serve the said John as mate of the said ship during the aforesaid voyage; but the said Richard, the servant of the said John, in that behalf for a long time, to wit, for the space of three months, did neglect and absent and withdraw himself from the same, and a great quantity of the said goods and merchandizes so put on board the said ship to be transported as aforesaid, to wit, ten chests of oranges, ten chests of lemons, one cask

cask of wine, and one pipe of oil, to the value of fifty pounds, were, for want of due care of the said Richard in that behalf, and through his neglect in the said voyage, intirely lost, wasted, and consumed; whereby the said John became liable, and was obliged to pay and satisfy one Gerard Bulwark of London, aforesaid, merchant, the owner thereof, on whose account the same were so shipped as aforesaid, the value thereof, to wit, the sum of fifty pounds, that is to say, at London aforesaid, in the parish and ward aforesaid; and one cask of wine of the said John, to the value of five pounds, being on board the said ship, under the care and custody of the said Richard, and was in and during that voyage either drank out and consumed by the said Richard, or for want of due care and diligence of the said Richard in that respect, or through his neglect, was entirely lost; and by reason of the negligence, ill-conduct, and misbehaviour of the said Richard in his duty as mate of the said ship in and during that voyage, the said John was obliged and under the necessity to hire and employ another person in the room and stead of the said Richard for a long time, to wit, for the space of six months in that voyage, that is to say, at London aforesaid, in the parish and ward aforesaid (here followed an *indebitatus assumpsit* for twenty pounds for money laid out, and breach generally assigned for non-payment, to the damage of the said John of one hundred pounds; and therefore he brings suit, &c.)

LONDON, ff. A. B. R. B. and J. B. complain of F. D. being, &c.: for that whereas the said Edward heretofore, to wit, on, &c. at, &c. was the owner or proprietor of a certain ship or vessel called the Charming Sally, whereof one J. V. was then master; and which said ship or vessel was then lying in the port of London, to wit, in the river Thames, and then and there bound from thence on a certain voyage to Liverpool in the county of L.; and the said E. being such owner of the said ship or vessel as aforesaid, and the said ship or vessel being bound on such voyage as aforesaid, they the said plaintiffs, on, &c. shipped and put on board, and caused to be shipped and put on board the said ship or vessel, a certain large quantity, to wit, one hundred and ten barrels of gunpowder of them the said plaintiffs, to be carried and conveyed therein from the said port of L. to L. aforesaid for them the said plaintiffs, for certain freight or reward to the said Edward on that occasion: And the said plaintiffs in fact further say, that although the said gunpowder was then and there accordingly received and taken into and on board of the said ship or vessel for such purposes as aforesaid; and although the said ship or vessel did afterwards set sail and proceed from the said port of L. upon her said intended voyage, and with the said gunpowder in and on board her as aforesaid; and although (1) *the said plaintiffs had made,*

Declaration, the plaintiff had delivered to the defendant a cask of gunpowder to be carried from A. to B. and had insured the same; the defendant, by deviating from the customary passage, was shipwrecked, and the gunpowder was entirely lost. The insurers refused to pay the insurances; and this declaration was drawn against the owners of the ship for deviating from the usual passage from A. to B.

(1) "the said ship or vessel ought in that voyage to have made the same by and according to the direct, usual, and customary way and passage, without deviation or departure from or in the same, without sufficient and reasonable cause for so doing: Yet the said plaintiffs in fact further say, that the said ship or vessel did not go or make such voyage as last aforesaid."

and caused to be made, certain lawful insurances by the usual and customary writings or policies of assurance upon the said gunpowder against the perils of the seas in that voyage, to wit, a certain insurance of one hundred and fifty pounds with one J. M. and a certain other insurance of one hundred and fifty pounds with one J. B.; and although it was then and there the duty of the said Edward, as such owner of the said ship or vessel as aforesaid, to have made such voyage as aforesaid with the said ship or vessel, by and according to the direct, usual, and customary way and passage, without deviation or departure from, or delay or hindrance in the same, without reasonable and sufficient cause for so doing, in order that the said plaintiffs, so being such freighters and proprietors of the said gunpowder as aforesaid, and having made such assurances thereon as aforesaid, might not lose or be deprived of the benefit of such assurances: Yet the said Edward, not regarding his duty as such owner of the said ship or vessel as aforesaid, but neglecting the same, did not go or make, or cause or procure to be made and gone, such voyage as aforesaid with his said ship or vessel, by and according to the direct, usual, and customary passage, without deviation or departure from, or delay or hindrance in the same, without a sufficient and reasonable cause for so doing, but neglected and omitted so to do; and on the contrary thereof, afterwards, and after the said ship or vessel had so sailed and proceeded on her said intended voyage as aforesaid, and before she completed the same, to wit, on, &c. by one J. V. his then servant, and then and there being in and having the command of the said ship or vessel, wrongfully, and without any sufficient and reasonable cause whatsoever for so doing, did deviate and depart from and out of the direct, usual, and customary way and passage in and of the said voyage from the said port of L. to L. aforesaid, with the said ship or vessel with the said gunpowder of the said plaintiffs in and on board (2) the same, that is to say, from and out of such direct, usual, and customary way and passage in that voyage up and into a certain river called, &c. and did then and there unnecessarily, and without sufficient and reasonable cause for so doing, touch and stay at, &c. in the said river there for a long space of time, to wit, from thence, until, and upon the twentieth day of, &c.; and although the said ship or vessel did afterwards proceed and sail from thence on her said intended voyage to L. aforesaid, was afterwards, and before her arrival there, in that voyage, to wit, on, &c. (3) by the violence of the winds and waves, cast upon a bank, and was thereby then and there broke, shattered, bulged, disjointed, and wholly lost; and the said gunpowder of the said plaintiffs, so laden and being on board her as aforesaid, was thereby greatly wetted, injured, damaged, and wholly spoiled; whereby they the said plaintiffs, but for such deviation (4) and departure of the said ship or vessel from and out of such direct, usual, and customary way and passage in that voyage as aforesaid, and for and by reason of her having so touched and stayed at, &c. in the said river called, &c. could, might, and would by law have recovered and compelled payment of their damages, to

(2) "her,"

(3) "by the dangers and perils of the seas,"

(4) "as aforesaid"

by them sustained by such loss, under and by virtue of (5) *the said several writings or policies of assurance so put on board the said ship or vessel as aforesaid*: Yet the said plaintiffs in fact further say, that by reason and means of such deviation and delay in that voyage as aforesaid, and on no other account whatsoever, the said insurances, so by them made on the said gunpowder as aforesaid, became and were avoided and rendered ineffectual and of no avail; and the said several underwriters or insurers on these occasions became and were exonerated and discharged from all sum and sums of money that would otherwise have been due and payable from them under their said several insurances for and in respect of the said loss or damage so sustained by the said plaintiffs as aforesaid; and in consequence thereof, they the said plaintiffs failed in the recovery of such sums of money in certain actions brought by them the said plaintiffs against the said J. M. and J. B. as such underwriters or insurers as aforesaid, on the said insurances so by them made as aforesaid, without knowing or being apprised of such deviation or delay as aforesaid, and were forced and obliged to pay, and did in fact pay divers sums of money, amounting to a large sum of money, to wit, to the sum of two hundred pounds, for and in respect of the costs and charges as well as of the defence of them the said J. M. and J. B. of such actions as of the prosecution thereof by them the said plaintiffs, to wit, at, &c. And whereas the said Edward, &c. &c. (Finish this Count same as the 1st, only omitting the parts in Italic, and inserting what is in margin.)

V. LAWES,

(5) "certain writings or policies of assurance, to wit, a certain writing or policy of assurance, before then underwritten and subscribed by the said J. M. for 150 l. and a certain other writing or policy of assurance before then underwritten and subscribed by the said J. B. for 150 l. upon the said gunpowder so put on board the said last-mentioned ship or vessel as aforesaid:"

LONDON, ff. John Watfon and Richard Phillip, assignees of the estate and effects of John Henry Gentill, a bankrupt, according to the form and effect of the several statutes now in force concerning bankrupts, complain of William Elyard being, &c.: for that "and" whereas before the aforesaid John Henry Gentill became a bankrupt, to wit, on the "said" fifth of March in the year of Our Lord 1782 "aforesaid," at L. aforesaid, in the parish of *St. Mary-le-Bow in the "and" ward of Cheap* "aforesaid," in consideration that the said John Henry Gentill, at the "like" special instance and request of the said William had retained and employed the said William (he the said William then and yet being a shipbroker), as the broker and agent of him the said John Henry Gentill, to let to hire and freight, *in the name of the said William, to the principal officers and commanders of his majesty's navy*, a certain "other" ship or vessel (that is to say, a certain "other" ship or vessel called the *Martha Louisa*), for certain brokerage or reward therefore payable *by the said J. H. Gentill to the said William for his labour and trouble therein*, "and also in consideration that the said William, as such broker and agent of the "said J. H. Gentill as aforesaid, had, under and by virtue of the "said last-mentioned retainer and employment, but in the proper "name of the said William, let the said last-mentioned ship or

Assumpsit in consideration of brokerage, defendant as agent for plaintiff undertook to let to hire plaintiff's ship to commissioners of navy, and that he would bring plaintiff such bills of imprest as he should receive.-- Breach, that he did not deliver such bills, amounting to 5000l.

Another Count upon an agreement executed.

“ vessel to the principal officers or commanders of his majesty’s navy, for and on behalf of his majesty, for certain hire and freight to be therefore paid in bills of imprest, for so long time as the said last-mentioned ship or vessel should be continued in his majesty’s service,” he the said William undertook, and *then and there* faithfully promised the said J. H. Gentill *to let to hire and freight, in the name of the said William, to the principal officers and commanders of his majesty’s navy, the said ship or vessel, and that he the said William would regularly bring or “and” deliver to “him” the said J. H. Gentill all such bills of imprest as “he” the said William should hereafter, “from time to time,” receive from the said principal officers and commanders of his majesty navy, for “and on account of” the hire and freight “aforesaid” of the said ship while she should continue in his majesty’s service, when and so soon as he the said William should receive such bills of imprest: And the said John Watson and Richard, assignees as aforesaid, say, that the said William, as such broker and agent to the said J. H. Gentill as aforesaid, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, under and by virtue of the said retainer and employment, did let the said ship or vessel, in the name of the said William, to the principal officers and commanders of his majesty’s navy, for and on behalf of his majesty, in consideration of certain hire and freight to be therefore paid in bills of imprest for so long time as the said ship should be continued in his majesty’s service: And the said John Watson and Richard, assignees as aforesaid, further “in fact” say, that the said “last-mentioned” ship or vessel was continued in his majesty’s service for a long space of time, to wit, for the space of two years and an half next after the making of the promise and undertaking “last” aforesaid: And although the said William, as such broker and agent as aforesaid, did, during that time afterwards from time to time receive from the principal officers and commanders of his majesty’s navy, for and on account of the hire and freight aforesaid, divers bills of imprest for divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of five thousand pounds of lawful money of Great Britain: Yet he the said William, not regarding his said “last-mentioned” promise and undertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said John Henry Gentill before he became bankrupt, and the said John Watson and Richard, assignees as aforesaid, since his bankruptcy, in this behalf, *both not brought or delivered*, “did not nor would bring and deliver,” the said “last-mentioned” bills of imprest, or any of them, either to the said J. H. Gentill before he became bankrupt, or to the said John Watson and Richard, assignees as aforesaid, since his bankruptcy, or to either of them (although often requested so to do); but he to do this hath hitherto wholly refused and still refuses, (2d Count like the first, except the words contained within inverted commas, and omitting the words in *Italic*. Three money Counts in *assumpsit* to Gentill before he became bankrupt, and account*

account for money had and received to the use of plaintiffs as assignees, with separate breaches for nonpayment of the money.)

GEO. WOOD.

JOHN TURNER and ——— Turner complain of Michael Rolman being, &c. in a plea of trespass on the case: for that whereas at the time of the making of the agreement hereafter next mentioned, to wit, on thirteenth May A. D. 1760; and from thence until and at the time of the seizure and detention of the brigantine or vessel called the Catherina hereafter mentioned, they the said plaintiffs were partners and joint dealers together in partnership in the way of merchandize, trade, and traffic, and were during all that time joint owners of the said brigantine or vessel called the Catherina, which said brigantine or vessel, at the time of the making of the said agreement hereafter mentioned, was in parts beyond the seas, to wit, at Amsterdam in Holland; and the said plaintiffs being partners and joint traders together as aforesaid, and so being joint owners of the said brigantine or vessel, they the said plaintiffs, on the said thirteenth of May in the year aforesaid, at Amsterdam aforesaid, to wit, at London, &c. aforesaid, at the special instance and request of said defendant, retained and hired said defendant to serve said plaintiffs in and on board and belonging to the said brigantine or vessel as captain or master thereof, a certain voyage which the said brigantine or vessel was then about to make, to wit, from Amsterdam aforesaid, to a certain place there called Monte Christi in the West-Indies, and from thence back again to Amsterdam: aforesaid: And it was thereupon then and there agreed by and between the said plaintiffs and the said defendant, that the said defendant should go in the capacity of captain or master of the said brigantine or vessel the said voyage, as should be further mentioned in his orders, and that said defendant on that account should be allowed the sum of sixty guilders Holland's current money by the month, and moreover one piece of eight by the day during all the days he should lay at Monte Christi; and further, in case the said ship with her cargo should not be consigned to a person or persons residing at Monte Christi, whereby consequently he said defendant should have the management of the sale and buying in of a new cargo, then, and in that case, the said defendant should be allowed, over and above the then already above-mentioned monthly pay and laying days at Monte Christi, to wit, for the sale of the said cargo the two and an half per cent. and for buying in a new cargo the two and an half per cent.: And the said agreement being so made, &c. (mutual promises): And said plaintiffs further say, that the said brigantine or vessel being loaded with divers goods and merchandizes of the said plaintiffs was by them afterwards, to wit, on the thirty-first day of May in the year aforesaid, dispatched on her said voyage, and the said plaintiffs then and there, to wit, on the same day and year last aforesaid, at, &c. aforesaid, caused to be delivered to the said defendant their ultimate orders how the

Declaration on special agreement by the owners against the captain of a ship, for deviating from his voyage, smuggling goods, &c. whereby ship was seized, &c.

said

said defendant was to proceed in his said voyage, and how to regulate and conduct himself in his said voyage, to the tenor, purport, and effect following, that is to say: *That the brigantine then lying ready before the said city of Amsterdam, and committed to said defendant to navigate the same, he said defendant was to take on board a pilot to bring him to the Texel, and there to make use of another pilot to carry him with the first favourable wind and weather out to sea, in order to prosecute his voyage to St. Eustatius; and having there taken in some wines, according to the directions sent to Mr. Johannes de Graaffe, to proceed on the said voyage with all speed to Monte Christi aforesaid; and being arrived, the said defendant was to apply to the secretary, Don Antonio Gomez Franco, to whom he was consigned, and who, as it was by the said order alledged, had orders to dispose of the said brig's cargo for the account of the said plaintiffs, and to provide the said defendant again with a cargo of white sugar; as soon as that should be effected, and the said brigantine should be so laden, he was immediately, wind and weather permitting, to return from Monte Christi directly to Amsterdam aforesaid, and particularly not to take in at Monte Christi aforesaid any other goods than those which should be shipped by the said Antonio Gomez Franco for account of said plaintiffs; moreover not to take in any goods on freight: And further, he was not to neglect to make probits at all places where needful, and to write to said plaintiffs by all opportunities; and that he was not to forget to cause the said Antonio Gomez Franco to ship in the cargo twenty quarter casks of sugar, that said plaintiffs might not have the whole cargo in large hogheads, which by the said order was alledged would facilitate them in making the declaration at Amsterdam aforesaid; and that the said defendant was to observe that upon his safe arrival in the Texel he was to declare only from the West-Indies, and particularly not to name any place, and to use all possible care and dispatch: And said defendant then and there, to wit, on same day and year last aforesaid, at London, &c. aforesaid, received of and from said plaintiffs the said orders so delivered to him as aforesaid, and according to the said agreement and his promise and undertaking aforesaid ought to have proceeded in and upon his said voyage, and to have conducted himself in all respects agreeable to the said orders so by him received as aforesaid: And although the said defendant afterwards, to wit, on first of June in the year aforesaid, did take on board a pilot to carry and pilot the said brigantine to the Texel, and afterwards, to wit, on the third of June in the year aforesaid, there made use of another pilot to carry him with the first favourable wind and weather out to sea, in obedience to his said orders so received as aforesaid; and although said defendant afterwards, to wit, on same day and year last aforesaid, was with the said brigantine out at sea, and might there have prosecuted his said voyage to St. Eustatius aforesaid, according to his said orders, and ought to have done according to the said agreement and his promise and undertaking aforesaid: Yet the said defendant, not regarding his promise and undertaking aforesaid, but contriving and fraudulently intending*

tending craftily and subtilly to deceive and defraud the said plaintiffs in this behalf, he the said defendant did not when he had so got out to sea prosecute his said voyage to St. Eustatius aforesaid, according to his said orders and instructions, and according to the form and effect of the said agreement, and of his promise and undertaking aforesaid, but therein wholly failed and made default; and on the contrary thereof, he the said defendant, with the said brigantine, instead of prosecuting his said voyage directly to St. Eustatius aforesaid, as he ought to have done, afterwards, to wit, on same day and year last aforesaid, and for a long time, to wit, for the space of ten days then next following, directed and steered his said brigantine or vessel for and towards Mount's Bay in the county of Cornwall, and there, near to and off Mount's Bay aforesaid, hovered with the said brigantine or vessel for a long time in order to break bulk and to unload out of her certain casks of brandy and other goods or merchandizes which the said defendant had before then wrongfully and unjustly, and unknown to said plaintiffs or either of them, clandestinely received, and caused to be received on board the said brigantine, in order that the said casks of brandy and other goods and merchandizes might be run and smuggled from and out of the said brigantine into this kingdom, and during that time did break bulk and unload, and cause to be broken bulk and unloaded, out of the said brigantine, the said casks of brandy, and other goods and merchandizes, into a certain boat on the high seas, near to and off Mount's Bay aforesaid, for the purpose aforesaid; by means whereof the said brigantine and the whole cargo of the said plaintiffs, being of the value of two thousand pounds, were afterwards, to wit, on the twelfth of June in the year aforesaid, seized and taken by certain officers then belonging to the customs of our lord the then and now king of Great Britain, and carried into the port of Scilly in the said county of Cornwall, as forfeited, and was kept and detained as forfeited for a long time, to wit, from thence hitherto, and plaintiffs have thereby wholly lost the said brigantine and her cargo, and the whole benefit, profit, and advantage of the said intended voyage, and have been put to great charges and expences in and about their endeavouring to recover their possession of their said brigantine and cargo, and to obtain their release and discharge from the said seizure and detention, to wit, at London, &c. aforesaid. (Add a Count for money laid out; another for money had and received; with conclusion to those Counts.)

Drawn by MR. WARREN.

LONDON, to wit. Francis Henry Shepherd, John Crutchfield, and Henry Crutchfield complain of R. Baston being, &c. special *assumpsit* in a plea of trespass on the case, &c.: for that whereas the said of the owners of a ship, against a shipbuilder, for not repairing and re-delivering her within a certain reasonable time for a reasonable reward, according to contract, whereby she became unfit for sea, was obliged to be unloaded, the goods and stores damaged, the voyage and insurance lost, and the profits upon cargo contracted for to be brought from abroad lost by reason of the alteration of the markets.

(plaintiffs)

(plaintiffs) heretofore, to wit, on the first day of October A. D. 1785, at London aforesaid, to wit, at the parish of St. Mary-le-Bow, in the ward of Cheap, were lawfully possessed (to wit, as owners and proprietors thereof) of a certain ship or vessel formerly called the Hope, but now the *Olium Terebinthina*, then being in a certain dock of the said defendant, situate at Limehouse in the county of Middlesex, and which said ship or vessel was then and there intended to be sent upon a certain voyage as soon as possible, but then and there stood in need of certain repairs and additions to the same (to wit, of certain upper works to the same, and of being sheathed with copper, and otherwise repaired); and the said defendant, then and there, and at the time of the making the six several promises hereafter mentioned, was a shipwright and shipbuilder; and thereupon afterwards, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said (plaintiffs), at the special instance and request of the said (defendant), would employ him the said (defendant), so then and there being a shipwright and shipbuilder as aforesaid, to make such repairs and additions to the said ship or vessel as aforesaid for them the said plaintiffs, as such owners and proprietors of the said ship or vessel as aforesaid, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, to make the said repairs and additions in about thirty days then next following, and to complete the same in the best manner and upon the most reasonable terms, and upon the completion thereof to redeliver the said ship or vessel to the said plaintiffs from and out of his aforesaid dock so repaired as aforesaid, and safely and carefully: And the said plaintiffs in fact further say, that they, confiding in the said promise and undertaking of the said defendant, did, afterwards, to wit, on the day and year aforesaid, at L. aforesaid, &c. employ him the said defendant to make such repairs and additions to the said ship or vessel as aforesaid; and although the said Robert did afterwards make such repairs and additions, and did afterwards redeliver the said ship or vessel to the said plaintiffs and from and out of his aforesaid dock: Yet the said Robert, not regarding his said promise and undertaking so made by him as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiffs in this behalf, did not make such repairs and additions to the said ship or vessel as aforesaid in about thirty days next after the making of his said promise and undertaking, nor complete the same in the best manner and upon the most reasonable terms, nor upon the completion thereof redeliver the said ship or vessel to the said plaintiffs from and out of his aforesaid dock so repaired as aforesaid, and safely and carefully (although to perform his said promise and undertaking he the said defendant was frequently requested by the said plaintiffs, to wit, at L. aforesaid, in the parish and ward aforesaid); but on the contrary, the said plaintiffs in fact further say, that the said defendant did not make such repairs and additions to the said ship or vessel as aforesaid, nor were the same completed or made until the end

and expiration of a much larger space of time than thirty days from the time of making his aforesaid promise and undertaking, to wit, until three months over and beyond thirty days from the making of such promise and undertaking, and did also complete the same, and particularly the said sheathing of the said ship or vessel, in a very bad, careless, negligent, improper, and unworkmanlike manner, and so as to render the said ship or vessel leaky, unsound, and unfit for sea, and did also do and perform such repairs and additions to the said ship or vessel upon very unreasonable and extravagant terms, and so as to put the said plaintiffs to much larger and greater expences than were necessary or reasonable, and in the redelivery of the said ship or vessel to the said plaintiffs from and out of his said dock as aforesaid, to wit, on the fourteenth day of January A. D. 1786, by himself and his servants, behaved in so negligent and unskilful a manner, and took so little and such bad care of the said ship or vessel, that the said ship or vessel was in the said redelivery and removal thereof from and out of the said dock, and for want of due and proper care and skill on that occasion, greatly shaken, bulged, disjointed, broken, damaged, and otherwise injured; and in consequence of her being so removed and delivered from and out of the said dock as aforesaid, and of the said damage so done to her on that occasion as aforesaid, and of the unskilful and improper manner in which she was so sheathed as aforesaid, the said ship or vessel shipped and took in water in such abundance and in such quantities, and became and was so leaky, unsound, and damaged, as to be altogether unfit for and wholly disabled from proceeding to sea on her aforesaid intended voyage, or upon any other voyage whatsoever; *whereby*, and by reason of which said several premises, they the said plaintiffs were forced and obliged to unload the said ship or vessel of certain stores and provisions, before then laden and put on board her for the said intended voyage, and to take and convey the said ship or vessel back again into the said dock of the said defendant, and afterwards removed into certain other docks, in one of which said docks (to wit, in a certain dock called Greenland Dock) the said ship or vessel still remains and continues, so unsound, damaged, and unfit for sea as aforesaid, and of little or no value whatsoever, as the same will always hereafter be, remain, and continue; whereby and by reason of which said several premises, the said ship was hindered and prevented from performing her said intended voyage, and wholly lost the same; and the said plaintiffs also thereby, and by reason of the said several other premises aforesaid, lost and were deprived, and have lost and been deprived, of all benefit and advantage that would have arisen and accrued to them from the said voyage, as well homeward as outward, and from all future voyages with the said ship or vessel, and certain insurances upon the said ship and goods so intended to be carried in her as aforesaid, and thenceforth made by the said plaintiffs at a great and considerable expence, under the idea of her going and performing her said intended voyage, became and were ineffectual and of no avail,

Whereby plaintiffs obliged to unload, &c.

avail, and the said stores and goods so by them provided for her said outward bound voyage as aforesaid, remained, and were and have been and still are left in and upon their hands unfold and undisturbed of; and they have, in consequence thereof, and of the said goods not being sent upon the said intended voyage, been at a great expence in the removal thereof from certain places to which the same had been and were conveyed for the purpose of being loaded and put on board the said ship, and the said stores and provisions were greatly wetted, damaged, and injured, and many of them were wholly spoiled; and the said plaintiffs have also been and were forced and obliged to lay out and expend a large sum of money in and about the taking the said ship or vessel into dock again as aforesaid, and there taking care of the same, and will hereafter be obliged to bear and be at further expence in and about the future care and removal of the said ship, and also have been, and still will be, considerably injured and damaged by not receiving, within the time in which the same would otherwise have arrived, a certain other cargo of goods and merchandizes ordered and contracted for by them the said plaintiffs, to be brought home in their said ship or vessel, being obliged to take and accept of such cargo pursuant to their contract for the same, the market and value of such cargo being now considerably reduced and lowered, and so likely to continue; to wit, at London aforesaid, in the parish and ward aforesaid.

V. LAWES.

Declaration for
not permitting
the plaintiff to
use the cabin of
a ship during her
voyage.

LONDON, *ss.* Simon Coley complains of Samuel Green being in the custody, &c. of a plea of trespass on the case, &c.: for that whereas defendant, at the time of the making of the promise and undertaking of defendant hereafter next mentioned, was master of a certain ship or vessel called the Charlotte, which said "last-mentioned" ship or vessel, at the time of the making of the promise and undertaking of defendant hereafter next mentioned, was lying, floating, and being in parts beyond the seas, to wit, at New Providence in the Island of Providence in America, and was then about to proceed in a certain voyage from thence to the port of London, to wit, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap; and defendant so being master of the said "last-mentioned" ship or vessel as aforesaid, and being about to proceed on the said "last-mentioned" voyage *with the said ship as aforesaid*, heretofore, to wit, on the first day of June A. D. 1775, to wit, at New Providence aforesaid, that is to say, at L. &c. aforesaid, in consideration that plaintiff, at special instance and request of defendant, "had paid" *would pay* unto him defendant the sum of twenty guineas, that is to say, the sum of twenty-one pounds of lawful money of Great Britain, he said defendant undertook, and then and there faithfully promised plaintiff that he said defendant would carry and convey plaintiff, and divers goods, wares, and merchandizes of him plaintiff in the said "last mentioned" ship or vessel, whereof he defendant was master as aforesaid,

from

from the said place called New Providence in America to the port of L. aforesaid, that is to say, at L. &c. aforesaid, and during the said voyage would suffer and permit plaintiff to have and enjoy the use of the cabin of the said ship *as a cabin passenger of and in the said ship*: And plaintiff saith, that he, confiding in the promise and undertaking of defendant so by him made in this behalf as last aforesaid, did afterwards, to wit, on the *same day and year, at New Providence aforesaid, that is to say, at L. &c. aforesaid, pay to said defendant the said sum of twenty guineas, that is to say, the said sum of twenty-one pounds of lawful money of Great Britain, for the purposes aforesaid; and although he said plaintiff, in pursuance of the said promise and undertaking of said defendant by him in this behalf made as aforesaid, did afterwards, to wit, on the said first day of June A. D. 1775 aforesaid, at New Providence aforesaid, that is to say, at L. &c. aforesaid, with his said goods, wares, and merchandizes, enter and go on board the said last-mentioned ship or vessel, whereof defendant then was such master as aforesaid, in order to be carried and conveyed as last aforesaid; and although the said ship or vessel, with plaintiff and his said goods, wares, and merchandizes, did afterwards, "on board the same," to wit, on third day of June A. D. 1755 aforesaid, at N. P. aforesaid, set sail and depart from the said place called N. P. on her said voyage to the port of L. aforesaid: Yet plaintiff saith, that defendant, not regarding his said promise and undertaking so by him made in this behalf as aforesaid, but contriving, &c. did not, during the said voyage, and during the time plaintiff was and continued on board the said ship, suffer or permit him plaintiff to have or enjoy the use of the cabin of the said ship as a cabin passenger of and in the said ship (although to perform his promise and undertaking so by him made in this behalf as last aforesaid defendant was requested by plaintiff afterwards, to wit, on the twentieth day of July A. D. 1775 aforesaid, and often, to wit, at L. &c. aforesaid); but defendant did afterwards, and whilst the said ship was proceeding on her said voyage as aforesaid, with plaintiff, and his goods, wares, and merchandizes on board the same as aforesaid, to wit, on said twentieth of July A. D. 1775 aforesaid, &c. forcibly drive and put plaintiff out of and from the cabin of said ship, and did then and there, and from thence for and during all the time that plaintiff was and continued on board the said ship, *i. e.* for the space of two months then next following, to wit, at L. &c. aforesaid, wholly refuse to suffer or permit plaintiff to use or enjoy the said cabin in any manner whatsoever; by means whereof plaintiff, during all that time, wholly lost and was deprived of the use and benefit of the cabin of the said ship, and was and is otherwise greatly injured and damnified, to wit, at London aforesaid, in the parish and ward aforesaid. (Add a 2d Count, leaving out what is in Italic, and inserting what is within inverted commas.)*

C. RUNNINGTON.

LONDON,

Chief mate v.
captain of a ship,
for discharging
him abroad and
not paying
wages.

LONDON, *vs.* W.P. complains of T.W. being, &c.: for that whereas heretofore, to wit, on, &c. A. D. 1783, at L. afore-said, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said W. at the special instance and request of the said T. would enter himself and serve as chief mate in and on board a certain ship or vessel called the Broad Oak, whereof the said T. was then and there master or commander, during a certain voyage, to wit, a voyage from the port of London to Boston in New England in North America, and from thence to Jamaica in the West Indies, and from thence back again to the said port of London, which the said ship or vessel was then about to make, he the said T. then and there, that is to say, on the day and year afore-said, at L. afore-said, in the parish and ward afore-said, undertook and faithfully promised the said W. to pay him at and after the rate of three pounds ten shillings sterling a month during the said voyage: And the said William in fact says, that after the making of the said promise and undertaking of the said T. to wit, on, &c. the said ship or vessel set sail and proceeded on her afore-said intended voyage, and did afterwards, to wit, on the twenty-sixth day of October in the year of Our Lord 1784, finish and complete the same; and that he the said W. confiding in the said promise and undertaking of the said T. so by him made as afore-said, did, after the making thereof, to wit, on the day and year first above-mentioned, enter himself, and did accordingly serve in and on board the said ship or vessel, as chief mate thereof, from the time that the said ship or vessel set sail on her said voyage until the said ship or vessel arrived at Jamaica in that voyage; and that he the said W. was always ready and willing, and suffered to remain and continue in and on board the said ship or vessel, and to serve therein in the capacity afore-said for and during the residue of the said voyage: Yet the said W. in fact further saith, that the said T. so then being such master or commander of the said ship or vessel as afore-said, would not permit or suffer him the said William to remain and continue on board the said ship or vessel, but whilst the said ship or vessel was at Jamaica afore-said, to wit, on, &c. A. D. 1784, wholly refused so to do, and then and there, without any lawful, reasonable, or probable charge whatsoever, and against the will of the said William, discharged, dismissed, and expelled him the said William from on board the said ship or vessel, and from his afore-said service therein, to wit, at, &c. and afterwards set sail and proceeded from Jamaica afore-said for the said port of London without him the said William; whereby, and by reason of which said several premises, the said T. became liable, upon the completion of the said voyage, to pay to the said William a large sum of money, to wit, the sum of forty pounds of lawful money of Great Britain, being at and after the rate of three pounds ten shillings sterling a month during the said voyage; whereof the said T. afterwards, to wit, on, &c. A. D. 1784 afore-said, at London afore-said, in the parish and ward afore-said, had notice: Yet the said T. not regarding his said promise and undertaking

dertaking so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, hath not as yet paid him the said sum of forty pounds, or any part thereof, although so to do the said T. was requested by the said W. aforesaid, to wit, on, &c. and often afterwards, at L. aforesaid in the parish and ward aforesaid, but he so to do hath hitherto wholly refused, and still doth refuse: And the said W. in fact further saith, that by reason of his being so dismissed from the said ship or vessel as aforesaid, he the said William lost the opportunity and benefit of a speedy return to England in the said ship or vessel, and all other advantage that might and would have arisen and accrued to him from his continuing on board the said ship or vessel during the remaining of the said voyage, was obliged to continue in Jamaica for a long space of time; and ultimately to return to England at a considerable expence in another and different vessel than the said ship or vessel from which he was so dismissed by the said Thomas as aforesaid, to wit, at London aforesaid in the parish and ward aforesaid: And whereas heretofore, to wit, on, &c. first above-mentioned, at L. aforesaid in the parish and ward aforesaid, in consideration that the said William, at the special instance and request of the said T. would enter himself and serve as chief mate in and on board a certain other ship or vessel called the Broad Oak, whereof the said T. was then and there master or commander, during a certain other voyage, to wit, another voyage from the port of London aforesaid to Boston aforesaid, and from thence to Jamaica aforesaid, and from thence back again to the said port of London, which the said last-mentioned ship or vessel was then about to make, at the rate of three pounds ten shillings sterling a month, he the said Thomas then and there, that is to say, on, &c. at L. aforesaid in the parish and ward aforesaid, undertook and faithfully promised the said William, that he the said Thomas would continue him the said William on board the said ship or vessel in the capacity aforesaid, for and during the whole of the said voyage: And the said William in fact says, that after the making of the said last-mentioned promise and undertaking of the said T. to wit, on, &c. the said last-mentioned ship or vessel set sail and proceeded on her said intended voyage, and did afterwards, to wit, on, &c. finish and complete the same; and that although he the said William, confiding in the said promise and undertaking of the said T. so by him made as aforesaid, did, after the making thereof, to wit, on the day and year first above-mentioned, enter himself to serve and did accordingly serve in and on board the said last-mentioned ship or vessel, as chief mate thereof, on that voyage, from the time that the last-mentioned ship or vessel set sail on her said intended voyage until the same ship or vessel arrived at Jamaica on that voyage; and although he the said W. was always ready and willing, and offered to remain and continue in and on board the said last-mentioned ship or vessel, and to serve therein, in the capacity aforesaid, for and during the residue of the said last-mentioned voyage: Yet the said William in fact further saith,

*Indebitatus of-
sumpsit for wages.*

that the said Thomas, not regarding his said last-mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said William in this behalf, did not continue him the said William on board the said last-mentioned ship or vessel in the aforesaid capacity of chief mate thereof, or in any other capacity, during the whole of the said last-mentioned voyage, but wholly refused so to do; on the contrary, he the said William saith, that during the said last-mentioned voyage, whilst the said last-mentioned ship or vessel was at Jamaica as aforesaid, to wit, on the said tenth day of July in the year of Our Lord 1784 aforesaid, he the said T. then and there being such master and commander of the said last-mentioned ship or vessel as aforesaid, without any lawful, reasonable, or probable cause whatsoever, and against the will of the said W. discharged, dismissed, and expelled the said William from on board the said last-mentioned ship or vessel, and from his aforesaid service therein, to wit, at L. aforesaid in the parish and ward aforesaid, and afterwards set sail and proceeded from Jamaica aforesaid for the said port of London without him the said William; whereby he the said William lost the opportunity and benefit of a speedy return to England in the said last-mentioned ship or vessel, and all other advantage that might and would have arisen and accrued to him from his continuing on board the said last-mentioned ship or vessel during the remainder of the said last-mentioned voyage, and was obliged to continue in Jamaica for a long space of time, and ultimately to return to England at a considerable expence in another and different vessel than the said ship or vessel from which he was so dismissed by the said T. as last aforesaid, to wit, in L. aforesaid in the parish and ward aforesaid: And whereas the said T. to wit, on, &c. was indebted to the said W. in the sum of one hundred pounds of like lawful money for the wages of him the said William before that time due and owing, and payable from the said T. to the said William for his service before that time, and at the like special instance and request of the said Thomas done and performed as chief mate in and on board a certain other ship or vessel called the Broad Oak, whereof the said T. was master or commander; and being so indebted, he the said Thomas, in consideration thereof, afterwards, to wit, on, &c. undertook and faithfully promised the said William to pay him the said last-mentioned sum of money when he the said Thomas should be thereto afterwards requested: And whereas afterwards, to wit, on, &c. in consideration that the said William, at the like special instance and request of the said Thomas, had before that time, by himself and his servants, done, performed, and bestowed other his work and labour. (Proceed to the end of this Count, and then add another Count for meat, drink, and other necessaries; money laid out, expended, and paid.)

V. LAWES.

N.B. The ship sailed from the port of Bristol.

Qu. As this is a special Count, whether necessary to lay the fact strictly; as if so,

the venue should be laid in Somerset, where the plaintiff entered, and from whence the ship sailed? or, is the venue immaterial?

LONDON,

LONDON, to wit. P. M. against R. M. : for that whereas he the said plaintiff, on, &c. at, &c. had in his possession on board his ship in the river of Thames, in London aforesaid, a great quantity of coals, to wit, three hundred and fourteen chaldrons of coals, for the sale of which he had bargained and contracted with A. B. C. D. and E. F. at and after the rate of thirty shillings a chaldron, provided the said coals were forthwith delivered to the said A. B. C. D. and E. F. from on board the said ship: And whereas he the said plaintiff, at, &c. at the special instance and request of the said defendant, retained the said defendant (being a coalheaver) to unload the said coals from on board the said ship, at and after the rate of one shilling and one penny a score chaldrons thereof; and in consideration thereof, he the said defendant afterwards, to wit, on, &c. at, &c. took upon himself, and then and there faithfully promised the said John, that the said defendant would forthwith unload the said coals from on board the said ship of the said plaintiff; and although he the said defendant afterwards, to wit, on, &c. at &c. did unload a part, to wit, fifty-eight chaldrons of the said coals, from on board the said ship of the said John, according to the form and effect of his said promise and undertaking; and although he the said plaintiff afterwards, to wit, on, &c. at, &c. requested the said defendant to unload the residue of the said coals from on board the said ship: Nevertheless the said defendant, not regarding his said promise and undertaking in form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not unload the residue or any further part of the said coals from on board the said ship, according to the form and effect of his said promise and undertaking, but neglected and refused so to do; by reason whereof he the said plaintiff lost the sale of the said residue of the said coals at the state and price aforesaid, and was forced to abate and did abate of the said price sixpence a chaldron thereof, and was also put unto and sustained great expences in and about the unloading and delivering of the said residue of the said coals from on board the said ship. And whereas he the said plaintiff afterwards, to wit, on, &c. at, &c. at the like special instance and request of the said Roger, retained and employed the said R. M. to unload a certain other quantity of coals of the said plaintiff from on board a certain other ship of the said plaintiff in the river of Thames aforesaid, for certain wages to be therefore paid by the said plaintiff to the said defendant; and in consideration thereof, he the said defendant afterwards, to wit, on, &c. at, &c. took upon himself, and then and there faithfully promised the said plaintiff, that he the said defendant would forthwith unload the said last-mentioned coals from on board the said last-mentioned ship; and although the said defendant afterwards, to wit, on, &c. at, &c. did unload a part, to wit, fifty-eight chaldrons, of the said last-mentioned coals from on board of the said last-mentioned ship of the said plaintiff, according

Declaration at the suit of a captain of a ship against a coal-heaver, for refusing to unload his said ship of the coals therein, according to an agreement, whereby he was obliged to abate in the price of his coals, and was also otherwise much damaged.

ad Count, omitting the loss by the abatement of sixpence on the chaldron.

ing to the form and effect of his said last-mentioned promise and undertaking; and although he the said plaintiff afterwards, to wit, on, &c. at, &c. requested the said defendant to unload the residue of the said last-mentioned coals from on board the said last-mentioned ship: Yet the said defendant, not regarding his said last-mentioned promise and undertaking so made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not unload the residue or any further part of the said last-mentioned coals from on board the said last-mentioned ship, but wholly neglected and refused so to do, to the damage of the said John of ten pounds; and thereupon he brings his suit, &c.

Declaration against defendant for stowing goods, ammunition, &c. in a ship let to freight by plaintiff to defendant for government service, in an improper, unskillful, and unreasonable manner, *per quod* plaintiff's ship was greatly injured.

LONDON, to wit. John Julius Angerstein, Thomas Lewis, and James Mather, complain of John Boddington, esquire, being, &c.: for that whereas the said plaintiffs, on the fourth of September 1782, were owners and lawfully possessed of and in a certain ship or vessel called the *Juliana*, with the tackle, apparel, and furniture thereunto belonging, of great value, to wit, of the value of pounds, of, &c. to wit, at London, &c.; and the said plaintiffs, so being owners of the said ship or vessel called the *Juliana*, with the tackle, apparel, and furniture thereunto belonging, afterwards, to wit, on the fourth of September 1782, at, &c. in consideration that the said plaintiffs, at the special instance and request of the said J. B. would let to freight and to hire the said ship called the *Juliana*, to be employed in his majesty's service, and to be under the orders and directions of him the said J. B. for certain freight to be therefore paid to the said plaintiffs, he the said J. B. *assumpsit* that all such ammunitions and stores as should be ordered to be put on board and stowed in the said ship or vessel should be put on board and stowed in a proper, skillful, and reasonable manner: And the said plaintiffs in fact say, that they, relying on the said promise and undertaking of the said J. B. afterwards, to wit, on, &c. at, &c. by a certain charter party then and there duly executed by the said J. J. A. on behalf of himself and the said T. L. and J. M. did let to freight the said ship or vessel called the *Juliana* to the said J. B. for the purposes aforesaid; and that the said ship or vessel continued in his majesty's service by virtue of the said charter party, to wit, from the said fourth of September 1782 to the ninth of October 1782, that is to say, at, &c.; and the said J. B. during that time, did order and cause to be put on board and stowed in the said ship or vessel divers large quantities of ammunition and warlike stores, to wit, three hundred tons of stops, to be carried and conveyed in the said ship or vessel to the West Indies, to wit, at, &c.: Yet the said J. B. did not put on board and stow, and cause to be put on board and stowed in the said ship or vessel the said ammunition and stores in a proper and reasonable manner, according to his said promise and undertaking; but on the contrary thereof, during the time aforesaid, to wit, on the fourth of October 1782, and on divers other

other days and times between that day and the said ninth of October 1782, to wit, at London, &c. the said ammunition and stores were put on board and stowed in the said ship or vessel in an improper, unskilful, and unreasonable manner; and by reason whereof of the said ship or vessel was greatly weakened, damaged, and strained, and the said plaintiffs were obliged to lay out and expend a large sum of money, to wit, the sum of nine hundred pounds of, &c. in and about the repairing of the said ship from such damage and straining, that is to say, at, &c. And whereas also the said plaintiffs, on the fourth of September 1782, at, &c. were owners and lawtully possessed of and in a certain ship or vessel called the Juliana, with the tackle, apparel, and furniture thereunto belonging, of great value, to wit, of the value of one thousand pounds, and which said ship or vessel had been properly fitted out and repaired by them the said plaintiffs for a twelve-months voyage or voyages in his majesty's service, and was then and there strong, firm, tight, and substantial, both above water and beneath, and fit to be employed in his majesty's service for a twelve-months voyage or voyages; and being so possessed thereof, to wit, on the fourth of September 1782, at, &c. in consideration that the said plaintiffs, at the like special instance and request of the said J. B. would let to freight to him the said last-mentioned ship or vessel, so being strong, firm, tight, staunch, and substantial, both above water and beneath, to be employed in his majesty's service in such voyages as should be directed, and to continue in pay for twelve months, and afterwards till her return to Deptford in the river Thames and receiving notice of discharge, for certain hire and freight by the ton by the month, to be therefore paid to the said plaintiffs during that time, the said pay to commence upon the plaintiffs' producing a certificate from the superintendant to his majesty's ordnance for shipping, or other proper officers for the said ship's being completed, victualled, manned, and provided with proper necessaries and stores for the ship and company, as far as incumbent on the said plaintiffs to provide, ready to sail and fit to proceed when requested, he the said J. B. *assumpsit, &c.* to employ the said ship or vessel in his majesty's service, and to continue the same in pay twelve months, and afterwards and until her return to Deptford in the river Thames and receiving notice of discharge, the pay to commence as aforesaid: And the said plaintiffs aver, that they, relying on the said promise and undertaking of the said J. B. afterwards, to wit, on the fourth of September 1782, at, &c. by a certain other charter party duly executed by the said J. J. A. on behalf of himself and the said T. L. and J. M. did let to freight the said ship or vessel called the Juliana to the said J. B. to be employed in his majesty's service, and to continue in pay for twelve months, and afterwards till her return to Deptford and receiving notice of discharge there, for certain hire and freight by the ton by the month to be paid to the said plaintiffs, the said pay to commence as aforesaid: And the said plaintiffs aver, that they afterwards, to wit, on the sixth of Sep-

2d Count, against defendant, who had hired plaintiffs ship for government service, for refusing to employ the ship for the time for which she was hired, or to pay for the same, *per quod* plaintiff lost the profits of her, and a large sum of money which he had expended to fit her for government service.

tember 1782, at, &c. did produce to the said J. B. a certificate from the proper officer for the purpose of the ship's being completely paid, victualled, manned, and provided with proper necessaries and stores for the ship and company, as far as was incumbent on the said plaintiffs to provide, ready to sail when required: Nevertheless the said J. B. afterwards, to wit, on the ninth of October 1782, at, &c. discharged the said ship or vessel from his majesty's service, and refused to employ her any longer, that is to say, at, &c.; by reason of which said premises the said plaintiffs not only lost great profit and advantage which they could and would have made from the freight of the said ship or vessel, according to the terms aforesaid, but also lost a large sum of money, to wit, the sum of pounds, which they had paid, laid out, and expended in and about repairing of the said ship or vessel, and making her fit to be employed in his majesty's service for a twelve-months voyage or voyages, that is to say, at, &c. And whereas also the said J. B. afterwards, to wit, on the first of October 1783, at, &c. was indebted to the said plaintiffs in ten thousand pounds of, &c. for the use and hire of divers ships, boats, and other vessels of the said plaintiffs, before that time let to hire by the said plaintiffs to the said J. B. and at his like special instance and request, and by the said J. B. according to that letting, had and used; and also for work and labour before that time done, performed, and bestowed by the said plaintiffs themselves, or their captains, mariners, and servants, and with their ship's boats and other vessels for the said J. B. at his like special instance and request; and being so indebted, &c. (*quantum meruit*; money paid, &c.; had and received; and an account stated; and common breach to five last Counts.)

3d Count, for
hire of ships, &c.

Declaration against defendant for not paying a sum of money for the freight and hire of plaintiffs' ship to Jamaica, according to his undertaking.

LONDON, to wit. J. M. and C. S. the younger complain of W. W.: for that whereas before and at the time of the making of the promise and undertaking herein after next mentioned, to wit, on the seventh of November 1782, the said J. and C. were possessed of a certain ship or vessel called the R. whereof was master one James Miller, then lying at anchor in the river Thames at the port of L.; whereof the said W. had notice: And thereupon, afterwards, to wit, on the seventh of November 1782, in consideration that the said James and Charles, at the special instance and request of the said W. would let the said ship or vessel of them the said James and Charles, to freight to the said William, for a certain voyage from the port of Southampton to the island of Jamaica in the West Indies, and would proceed with the said ship or vessel in fourteen days from the port of London aforesaid to the port of Southampton aforesaid, and there take on board the said ship or vessel the goods and merchandizes of the said W. for the said voyage; and safely and securely carry and conduct the said goods and merchandizes in the said ship or vessel (the perils and dangers of the seas excepted) from the port of Southampton aforesaid

aforesaid to the island of Jamaica aforesaid, and there deliver the same to the order of the said William, he the said William *assumpsit* to pay them for the said freight and hire of the said ship or vessel the sum of pounds of, &c. if the said ship or vessel should sail with convoy during the said voyage, or a proportionable allowance over and above the said sum of if the said ship or vessel should proceed on the said voyage without convoy, whenever he the said William should be thereto afterwards requested: And the said James and Charles in fact say, that they, confiding in the said promise and undertaking of the said William, afterwards, to wit, on, &c. at, &c. did let the said ship or vessel to freight to the said William, and afterwards, and within the space of fourteen days then next following, did proceed with the said ship or vessel from the port of London aforesaid to the port of S. aforesaid, and did there take on board the said ship or vessel the said goods and merchandizes of the said William for the said voyage: And the said James and Charles in fact further say, that the said ship or vessel, with the said goods and merchandizes so loaded on board her as aforesaid, afterwards, to wit, on the tenth of February 1783, set sail and departed on her said voyage with convoy from the port of Southampton aforesaid to the island of Jamaica aforesaid, and afterwards, to wit, on the first of May in the year last aforesaid, arrived there with the said goods and merchandizes on board her in safety as aforesaid; which said goods and merchandizes, so loaden on board the said ship or vessel as aforesaid, afterwards, to wit, on the same day and year last aforesaid, were safely and securely delivered at the said island of Jamaica as aforesaid, to the order of the said William; whereof the said William afterwards, to wit, on the first of August 1783, at, &c. had notice; and by reason thereof the said William became liable to pay, and ought to have paid, to the said J. and C. the said sum of pounds, according to the said promise and undertaking in that behalf made as aforesaid. (2d Count, for the freight and carriage of goods; and *quantum meruit*; money had and received; and an account stated. Breach.)

Drawn by MR. CROMPTON.

WHEREAS the said J. on, &c. at L. aforesaid, in the parish of, &c. as husband of a certain ship called the Ranger, was indebted to the said R. B. in forty pounds, for work and labour of the said R. by the said R. before that time done and performed by himself and his servants, in and about the repairing and fitting out the said ship, whereof the said J. was husband, at the special instance and request of the said J. and on his retainer, and for divers materials and other necessary things used and applied in and about that work and labour before then found and provided by the said R. at the like request of the said J.; and being so indebted, &c.: And whereas, &c. in consideration the said R. had before then, at the special instance and request of the said J. as husband of the

Against an husband of a ship, for money due to plaintiff for fitting and repairing the ship.

Indebitatus assumpsit.

Quantum meruit.

said ship, and on his retainer, had before then done and performed other his work and labour by himself and his servants in and about the repairing and fitting out the said ship, whereof the said J. so was husband, and had found and provided divers other materials and necessary things used and applied in and about that work and labour, he the said J. undertook, &c. (*Indebitatus assumpsit* and *quantum meruit* for goods sold and delivered to defendant; the like for work and labour and materials found for defendant; *indebitatus assumpsit* for money laid out; and common conclusion.

Drawn by MR. WARREN.

AGAINST ARCHITECTS, SURVEYORS, AND BUILDERS, &c.

Declaration against defendants for putting improper cement on the walls of plaintiff's house, and for not building according to contract.

1st Count, against defendants as architects, builders, and surveyors, and proprietors of a certain cement to case houses with to make them resemble stone, for inartificially executing their contract with plaintiff to survey and superintend the building of his museum, and casing it with cement, so that it became ruinous.

MIDDLESEX, to wit. Robert Adam and J. Adam, late of &c. architects and surveyors, were attached to answer George Keate, esquire, in a plea of trespass on the case, &c.; and whereupon the said G. by H. J. his attorney, complains, &c.: for that whereas the said R. and J. long before and at the several times hereinafter mentioned, were, and continually from thenceforth hitherto have been, and still are, architects and surveyors, and the art, business, and occupation of architects and surveyors during all the time aforesaid have exercised and carried on, and still do use, exercise, and carry on, to wit, at the parish of St. George, Bloomsbury, in the county of Middlesex: And whereas the said R. and J. before and at the said several times hereinafter next mentioned, were possessed of a certain cement or plaster by them used and applied for the purpose of covering and coating the walls of houses and other buildings, to wit, at, &c.: And whereas also the said G. heretofore, to wit, on the first of March 1776, at the parish aforesaid, in the county aforesaid, was about to erect and build a certain building, as well for the purpose of a library, wherein to keep divers books, manuscripts, and papers of the said G. as also for the purpose of a museum or repository for the reception, preservation, and safe-keeping of divers natural productions and other curiosities of the said George; and the said R. and J. so being architects and surveyors as aforesaid, and so being possessed of the said cement or plaster as aforesaid; and the said George so being about to erect and build the said building for the purpose aforesaid, on the said first of March 1776, at, &c. a certain discourse was had and moved by and between the said G. and the said R. and J. so being such architects and surveyors as aforesaid, as well of and concerning the said buildings so intended to be built and erected by the said G. and of the plan, elevation, covering, finishing, and completing thereof, fit and proper for the purposes aforesaid of the said George, and of

the expence attending the building, and also of and concerning the said cement and plaister of them the said R. and J. and of its propriety and fitness for the covering and coating of the walls of houses and other buildings, and for the cement of brick and stone-work of buildings, in order to render the same more strong and durable, and of the elegant and neat look and appearance of the cement or plaister on walls, and the strength and durability thereof, and of the expence of such cement or plaister; on which said discourse, so had as aforesaid, it was then and there recommended by the said R. and J. to the said George to have the said walls of the said intended building of the said George covered and coated with the said cement or plaister of them the said R. and J. to render the outside appearance thereof neat, elegant, and firm, and to have the brick-work of the arches, angles, and certain other parts of the said intended building, laid, plaistered, and cemented with the said cement or plaister, in order to render the said arches, angles, and other parts of the said building, peculiarly strong and durable; and thereupon, and upon that discourse, afterwards, to wit, on, &c. at, &c. in consideration that the said George, at the special instance and request of the said R. and J. would employ them the said R. and J. so being such architects and surveyors as aforesaid, in and about the surveying and superintending the making and erection of the said building so intended to be built by the said George as aforesaid, and would employ them the said R. and J. to cover and coat the walls of the said building with their said cement or plaister, and otherwise to use, work, and apply their said cement or plaister in such manner, and in and about such parts of the said intended building, as they the said R. and J. should think fit and proper, and would pay to them the said R. and J. a reasonable price for such of their cement or plaister as should in the course of the said work be used, worked up, and applied in and about the said building, and also a reasonable sum or reward for their the said R. and J.'s surveying and superintending the elevation, finishing, and completing thereof as such architects and surveyors as aforesaid, they the said R. and J. undertook, and to the said G. then and there faithfully promised, to survey and superintend the elevation, erection, finishing, and completing of the said building as such architects and surveyors as aforesaid, and that the said building should be built, erected, constructed, made, and completed in a skilful, artificial, and workmanlike manner, and when covered and coated with their said cement or plaister, and finished and completed, should not only be firm, strong, and durable, but also look and appear neat and elegant, and be altogether fit and proper for the purpose aforesaid for which the same was so intended by the said George: And the said George in fact saith, that he, confiding in the said promises and undertakings of the said R. and J. by them so made as aforesaid, and in hopes of the faithful performance thereof, afterwards, to wit, on, &c. at, &c. did employ the said R. and J. so being such architects and surveyors as aforesaid, to survey and superintend the elevation, erection, and completion of the said building so intended to be built by the

the said George for the purpose aforesaid; and did employ the said R. and J. to cover and coat the walls of the said intended building with the said cement or plaister, in such manner, and in and about such parts of the said buildings as they the said R. and J. should think fit and proper to apply or use the same, in order to render the said building strong, firm, and durable, and fit and proper for the purposes for which the same was intended by the said George; and should agree to pay to them the said R. and J. a reasonable price for such of their said cement or plaister as should in the course of the said work be used, worked up, and applied in and about the said building, and also a reasonable sum or reward for their the said R. and J. surveying and superintending the elevation, erection, finishing, and completing thereof, as such architects and surveyors as aforesaid: And the said George further says, that the said building afterwards, to wit, on, &c. at, &c. was built, erected, finished, and completed; and that although the said R. and J. did act as architects and surveyors in and about the said building during the building thereof, and did superintend the building, elevation, erection, finishing, and completing thereof, and did use divers large quantities of the said cement or plaister in and about the said building, and in the covering and coating the walls thereof; and that although he the said George hath since paid to the said R. and J. as well a large sum of money, to wit, the sum of two hundred and seventy-eight pounds six shillings of, &c. for their said cement or plaister, used, worked up, and applied by them the said R. and J. and the workmen employed in and about the said building under the order and direction of the said R. and J. as also a certain other large sum of money, to wit, the sum of other forty-seven pounds eighteen shillings of, &c. for their the said R. and J. and their clerks and servants, planning, designing, surveying, and superintending the elevation, erection, construction, finishing, and completing thereof, as such architects and surveyors as aforesaid; and that although he the said George hath paid and expended in the whole a large sum of money, to wit, the sum of one thousand pounds of, &c. in and about the elevation, erection, finishing, and completing of the said building so built and erected as aforesaid, to wit, at, &c.: Yet the said R. and J. not further regarding their said promise and undertaking by them so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive, injure, and defraud the said George in this behalf, craftily and subtilly deceived, injured, and defrauded the said G. in this, that the said building was not built, erected, constructed, made, finished, or completed in a skilful, artificial, and workmanlike manner, and when covered and coated with the said cement or plaister of the said R. and J. was not strong, firm, and durable, nor did the same building look or appear neat or elegant, nor was the same, when finished and completed, in the least fit and proper for the purposes, or any of the purposes, for which the same building was intended by the said G.; but on the contrary thereof, the said building was built and erected, and caused and procured to be built, erected, finished,

finished, and completed by the said R. and J. in a very unskilful, unartificial and unworkmanlike manner, and was not nor is of sufficient firmness, strength, or durability, or in the least neat or elegant, or fit or proper for the purposes, or any of the purposes, for which the same was intended by the said George; and the said cement or plaister, so used, worked up, and applied in and about the said building, during the building thereof, and in and about the coating and covering of the walls thereof, was not only badly compounded and made up of bad and improper materials and ingredients, but was also so improperly, inartificially, and injudiciously used, worked up, and applied in and about the said building, and in the arches, angles, and other parts thereof, and in and about the covering and coating of the walls of the said building, that the walls, roof, and gutter of the said building were thereby rendered altogether wet, damp, insecure, and unstable, inasmuch that all and every the timbers, rafts, beams, floors, joists, pinnings, under-pinnings, waincots, and skirtings of the said building, soon after the building thereof, to wit, on the first of June 1781, became and were wholly rotten and perished, and now are and still remain rotten and perished, and the said cement or plaister so used, worked up, and applied in and about the said building, and in the coating and covering thereof, hath in divers and very many parts, as well before as since the first of June 1781, cracked, bulged, given way, and fallen down, and the whole of the said building, before the commencement of this action, was, and still is, in great decay, and hath hitherto been, and still remains, of no use or value whatever to the said George, to wit, at, &c. contrary to the promise of the said R. and J. by them so made as aforesaid. And whereas also the said R. and J. before and at the said several times hereinafter mentioned, were possessed of a certain other cement or plaister by them used and applied for the purpose of covering and coating of the walls and other buildings: And whereas the said George heretofore, that is to say, on the said first of March 1776, at, &c. (same as 1st Count from hence to the end). And whereas also the said G. afterwards, to wit, on, &c. at, &c. was about to erect and build a certain other building, as well for the purpose of a library wherein to keep divers books, manuscripts, and papers, as also of a museum or repository for the reception, preservation, and safe-keeping of several natural productions and other curiosities of the said George: And whereas also the said R. and J. afterwards, to wit, on, &c. at, &c. was possessed of a certain other cement or plaister by them the said R. and J. greatly recommended and extolled for the propriety and fitness for the covering and coating of the walls of houses and other buildings, and for the firmness and durability thereon; and the said G. so being about to erect and build the said last-mentioned building for the purposes last aforesaid; and the said R. and J. so being possessed of their said last-mentioned cement or plaister as last aforesaid, afterwards, to wit, on, &c. at, &c. in consideration that the said G. at the like special instance and request of the said R.

and

2d Count; omit in this Count their acting as farveyors.

3d Count, stating generally, that in consideration plaintiff had agreed to employ defendants to case the building, they undertook to do it in a workmanlike manner.

and J. had agreed to employ the said R. and J. to cover and coat the walls of the said last-mentioned building, when the same should be erected, with their said cement or plaister, and otherwise to use and apply their said last-mentioned cement or plaister in and about such parts of the said last-mentioned building, and in such manner as they the said R. and J. should think fit and proper, so as to render the said last-mentioned building strong, firm, and durable, and fit and proper for the purposes last aforesaid for which it was intended by the said George, and had also undertaken to pay them the said R. and J. a reasonable price or reward for such of their said last-mentioned cement or plaister as should be used or applied, or caused to be used or applied, by them, in and about the said last-mentioned building, they the said R. and J. undertook, and to the said G. then and there faithfully promised, to use and apply their said last-mentioned cement or plaister in and about the said last-mentioned building, and to coat and cover the walls of the said last-mentioned building therewith, when erected and built as last aforesaid, in a fit, proper, and workmanlike manner; And the said George in fact further says, that afterwards, to wit, on the first January 1777, at, &c, the said last-mentioned building was erected and built, and that the said R. and J. did use and apply, and did cause to be used and applied, their said cement or plaister in and about the said last-mentioned building, and did coat and cover the walls of the said last-mentioned building, when erected and built as aforesaid, with their said last-mentioned cement or plaister, in such manner as they thought fit and proper; and that although the said George hath since paid to the said R. and J. another large sum of money, to wit, the sum of pounds, for such of their last-mentioned cement or plaister as was by them used and applied, and caused to be used and applied, in and about the said last-mentioned building, and in covering and coating of the walls thereof, to wit, at, &c,; Yet the said R. and J. not further regarding their said last-mentioned promise and undertaking by them so made as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive, injure, and defraud the said George in this behalf, craftily and subtilly deceived and injured in this, that they the said R. and J. did not use and apply, or cause to be used and applied, their said last-mentioned cement or plaister in and about the said last-mentioned building, nor did cover and coat the walls of the said last-mentioned building therewith, when erected and built as last aforesaid, in a fit, proper, and workmanlike manner; but on the contrary thereof, the said R. and J. used and applied, and caused to be used and applied, their said last-mentioned cement or plaister in and about the said last-mentioned building in an improper, unartificial, and unworkmanlike manner, and put their said last-mentioned cement or plaister on the walls of the said last-mentioned building, when erected and built as last aforesaid, to coat and cover the walls thereof, in an unartificial and unworkmanlike manner, and whilst the walls of the said last-mentioned building were wet, damp, and
wett

unfit to receive the same, and put and applied their said last-mentioned cement or plaister on the top and roof of the said last-mentioned building, and therewith coated and covered the said top and roof thereof, and used and applied their said last-mentioned cement or plaister in and about the making, working, and construction of the gutters of the said roof; and by reason whereof, and of the said R. and J. using and applying the said last-mentioned cement or plaister in so improper, unartificial, unworkmanlike, and injudicious a manner, the walls of the said last-mentioned building were prevented and hindered from drying, and the said last-mentioned building was thereby rendered damp, rotten, insecure, and unstable, insomuch that the timbers, beams, rafters, joists, floors, wainscots, skirtings, pinnings, and under-pinnings of the said last-mentioned building, soon after the building thereof, to wit, on the first June 1781, became and were rendered rotten and perished; and the said cement or plaister, so used, put on, and applied in and about the coating and covering of the said last-mentioned building, hath in divers parts thereof, as well before as since the said first June 1781, cracked, bulged, and given way, and the whole of the said last-mentioned building became and was, and still is and remains, of no use or value whatsoever to the said George, to wit, at, &c. contrary to the said last-mentioned promise and undertaking of the said R. and J. And whereas also the said G. afterwards, to wit, on, &c. at, &c. was about to erect and build a certain other building, as well for the purposes of a library wherein to keep divers books, manuscripts, and papers, as also of a museum or repository for the reception, preservation, and safe-keeping of divers natural productions and other curiosities of the said George; and the said George so being about to erect and build the said last-mentioned building, afterwards, to wit, on, &c. at, &c. in consideration that the said George, at the like special instance and request of the said R. and J. had employed them the said R. and J. to cover and coat the walls of the said last-mentioned building, when the same should be erected, and the walls thereof should be fit and proper to receive such coating or covering, with a certain other cement or plaister whereof the said R. and J. were possessed, for a reasonable reward to be therefore paid by the said G. to the said R. and J. they the said R. and J. undertook, and to the said G. then and there faithfully promised, to cover and coat the said last-mentioned building, when the same should be erected, and the walls thereof fit and proper to receive such coating and covering, with the said last-mentioned cement or plaister, in a proper, artificial, and workmanlike manner: And the said George in fact further says, that afterwards, to wit, on, &c. at, &c. the said last-mentioned building was erected and built; and that although the said R. and J. afterwards, and after the said last-mentioned building was erected and built as last aforesaid, did cover and coat the said last-mentioned cement or plaister, although the said George hath since paid to the said R. and J. another large sum of money, to wit, the sum of other two hundred and seventy-eight pounds six shillings, for the coating and covering

4th, In consideration plaintiff had employed them.

covering thereof as last aforesaid : Yet the said R. and J. not regarding their said last-mentioned promise and undertaking by them so made as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said George in this last-mentioned behalf, did not cover and coat the walls of the said last-mentioned building with their said last-mentioned cement or plaister in a proper, artificial, and workmanlike manner ; but on the contrary thereof, they the said R. and J. covered and coated the walls of the said building in an improper, unartificial, and unworkmanlike manner, and whilst the walls thereof were damp and wet, and wholly unfit to receive the same, whereby not only the last-mentioned cement and plaister, soon after the doing thereof, in divers parts and places bulged and gave way, but also the walls and other parts of the said last-mentioned building were thereby rendered damp and wet, and wholly prevented and hindered from drying ; and by reason thereof, and of the dampness of the said walls, the timbers, rafts, beams, joists, floors, waincots, skirtings, pinings, and under-pinnings of the said last-mentioned building, soon after the building thereof, to wit, on, &c. at, &c. became and were rendered rotten and perished ; and the said last-mentioned building became and was in great decay, insecure, and unstable; and still remains so in decay, insecure, and unstable, and hath been and still is wholly unfit for the purposes last aforesaid, for which the same was so intended by the said George, and of no use or value whatsoever to him, to wit, at, &c. And whereas also the said George afterwards, to wit, on, &c. at, &c. was about to erect and build a certain other building to serve as a library and museum ; and being so about to build the said last-mentioned building, afterwards, to wit, on, &c. at, &c. in consideration that the said George; at the like special instance of the said R. and J. had employed them the said R. and J. to cover and coat the walls of the said last-mentioned building, when the same should be erected and built, with a certain other cement or plaister, whereof the said R. and J. were possessed, for a certain other reasonable reward to be therefore paid by the said George to the said R. and J. they the said R. and J. undertook, and to the said G. then and there faithfully promised, to cover and coat the walls of the said last-mentioned building, when the same should be erected and built, with their said last-mentioned cement or plaister, in a proper, artificial, and workmanlike manner : And the said George in fact further says, that afterwards, to wit, on, &c. at, &c. the said last-mentioned building was erected and built ; and that although the said R. and J. did cover and coat the walls thereof, when the same was so erected and built as last aforesaid, with their said last-mentioned cement or plaister : Yet the said R. and J. not regarding their said last-mentioned promise and undertaking by them so made as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said George in this last-mentioned behalf, did not cover and coat the walls of the said last-mentioned building with their said last-mentioned cement or plaister in a proper, artificial, or workmanlike manner ;

5th, Stating the injury more generally.

manner ; but on the contrary thereof, the said R. and J. not only covered and coated the said walls thereof in a very unartificial and unworkmanlike manner, but also craftily, deceitfully, and injudiciously, and contrary to the usual method and course of building, coated and covered the roof of the said last-mentioned building with their said cement or plaister, and made and constructed the gutters, and lined the gutters of the said roof with the said cement or plaister, and otherwise used and applied the said last-mentioned cement or plaister in and about the said last-mentioned building in so improper, unartificial, and injudicious a manner, that by reason thereof, and on no other account whatsoever, the said last-mentioned building was rendered so damp, that the timbers, rafts, beams, joists, floors, wainscots, skirtings, pinnings, and under-pinnings thereof, soon after the building thereof, to wit, on, &c. at, &c. became and were rotten and perished, and the whole of the said building was thereby rendered in decay, insecure, and unstable, and hath from thence hitherto remained and still remains so in decay, insecure, and unstable, and hath from thence hitherto remained and still remains of no use or value whatsoever to the said George, to wit, at, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said George, at the like special instance and request of the said R. and J. so being surveyors and architects as aforesaid, had employed the said R. and J. as surveyors, to survey and superintend the building, erecting, finishing, and completing of a certain other building or erection, which the said G. was then about to build and erect, for a reasonable reward to be therefore paid by the said George to the said R. and J. they the said R. and J. undertook, and to the said George then and there faithfully promised, to survey and superintend the building, erecting, finishing, and completing thereof, and that the same building should properly and in a workmanlike manner be built and erected ; and that the materials with which the said last-mentioned building should be built and erected should be good, sound, and in all respects fit and proper materials for that purpose : And the said George in fact further says, that the said last-mentioned building or erection afterwards, to wit, on, &c. at, &c. was built, erected, finished, and completed ; and that although the said R. and J. as such surveyors as aforesaid, did from time to time, during the building, erecting, finishing, and completing of the said last-mentioned building, survey and superintend the same : Yet the said R. and J. not further regarding their said last-mentioned promise and undertaking so by them made as last aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and injure the said George in this behalf, craftily and subtilly deceived and injured the said George in this, that they the said R. and J. did not take care, as such surveyors as aforesaid, that the said last-mentioned building was built and erected in a proper and workmanlike manner, and that the materials with which the same was so erected and built as last aforesaid were good, sound, and in all respects fit and proper materials for the building, erecting, finishing, and completing thereof ; but on the contrary thereof, the said

6th Count, to build with sound materials ; and although defendants did build, yet timbers, &c. became rotten, &c.

said R. and J. so improperly governed and conducted themselves; as such surveyors as aforesaid, in and about the surveying and superintending the said last-mentioned building during the building thereof, that the said last-mentioned building was built in so improper, injudicious, and unworkmanlike manner, and with such bad and improper materials, that the timbers, rafters, beams, joists, floors, wainscots, skirtings, pinnings, and under-pinnings thereof, soon after the said last-mentioned building was so erected, built, finished, and completed as aforesaid, to wit, on, &c. became and was rotten and perished, and the whole of the said last-mentioned building was and became ruinous, weak, insecure, and unstable, and hath from thence hitherto so remained and continued weak, insecure, and unstable, and hath altogether become and is of no use or value whatever to the said George, to wit, at, &c. contrary to the promise and undertaking of the said R. and J. by them so made as last aforesaid. (Count for money paid, laid out, and expended; ditto had and received; common breach to two last Counts; damage three thousand pounds.)

THO. WALKER.

Declaration in case, the company of Brewers of London against defendant a surveyor, for not surveying an estate belonging to the said Company, and making a plan thereof according to his promise, and for which they had paid him in part a large sum of money.

LONDON, *ss.* The masters and keepers or wardens and commonalty of the mystery or art of Brewers of the city of London complain of E. V. being in the custody, &c. : for that whereas the said master and keepers or wardens and commonalty, on the first day of July 1745, were, and long before had been, and ever since have been, and still are, seised in their demesne as of fee of and in a certain estate, consisting of the manor of Willliots, in the county of Middlesex, and of and in divers lands and tenements, situate, lying, and being in the parish of South Mimms in the said county; and the said defendant now is, and during all the time aforesaid hath been, a surveyor of lands; and the said plaintiffs so being seised of the said estate, and the said defendant so being a surveyor of lands as aforesaid, on the said first day of July in the year aforesaid, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, the said plaintiffs, at the instance of the said defendant, retained and employed the said defendant to survey the said estate, and make a plan thereof to the said plaintiffs, for the reward or hire to be therefore paid to the said defendant by the said plaintiffs, that is to say, so much money as the said defendant should therefore reasonably deserve to have, and had undertaken, and then and there faithfully promised the said defendant, to pay him for the same the said reward or hire; and in consideration thereof, the said defendant then and there undertook, and faithfully promised the said plaintiffs, to survey the said estate, and make a plan thereof, and to deliver the said plan to the said plaintiffs within a reasonable time then next following; and although the said defendant so undertook and promised to survey the said estate, and make a plan thereof, for the said plaintiffs, for a reward or hire to be therefore paid to the said defendant by the said plaintiffs, that is to say, so much

much money as the said defendant should therefore reasonably deserve to have, and had undertaken and then and there faithfully promised the said defendant to pay him for the same the said reward or hire ; and in consideration thereof, the said defendant then and there undertook, and faithfully promised the said plaintiffs, to survey the said estate, and make a plan thereof, and to deliver the said plan to the said plaintiffs within a reasonable time then next following ; and although the said defendant so undertook and promised to survey the said estate, and make a plan thereof, and deliver the said plan as aforesaid ; and although the said plaintiffs have, since the said retainer and employment, paid to the said defendant a large sum of money, to wit, the sum of fifty-two pounds ten shillings, towards payment to him of the said hire or reward for the surveying of the said estate, and making a plan thereof, and have always been ready, and still are ready, to pay to him any further sum of money as the said defendant would deserve to have for that business, on the finishing thereof and delivery of the said plan to them, to wit, at L. aforesaid, in the parish, &c. aforesaid ; and although a short time, to wit, three months next after the making of the said promise and undertaking of the said defendant, was a reasonable time for the surveying of the said estate, and making a plan thereof, and delivering such plan to the said plaintiffs : Yet the said defendant, not regarding, &c. but contriving, &c. he the said defendant hath not yet surveyed the said estate, and made a plan thereof, nor delivered any plan thereof to the said plaintiffs, or to any of them (although to do this the said defendant afterwards, to wit, on, &c. and often afterwards, at L. &c. was requested by the said plaintiffs) ; but he to do this, &c. And whereas the said plaintiffs, being so seized, &c. (A 2d Count, that defendant was to draw the plan and deliver it forthwith, as soon as the nature of the business would admit ; money had and received ; money laid out, &c. ; meat, drink, washing, and lodging found and provided by the Company for defendant and divers other persons ; and common conclusion.)

SUFFOLK, to wit. R. N. v. J. F. : for that whereas on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would employ the said defendant to make a survey of certain estates of the said plaintiff, at and for a certain reasonable reward to be therefore paid by the said plaintiff to the said defendant for the same, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to make such survey in a proper, good, and sufficient manner : And the said plaintiff avers, that although the said plaintiff did then and there employ the said defendant to make such survey as aforesaid, and did then and there pay to the said defendant a large sum of money, to wit, the sum of thirty-five pounds, for making such survey, the same being a reasonable reward on that occasion : Yet the said defendant, not regarding, &c. did not make the said survey in a proper, good, and sufficient manner, but therein wholly

Declaration against a surveyor, for not making a survey in a good and sufficient manner, contrary to his promise.

ad Count, on
consideration
executed.

failed and made default, and, on the contrary thereof, made a survey of the same in so insufficient and imperfect a manner, that the said survey so made by the said defendant was of no use or value to the said plaintiff, to wit, at, &c. in, &c. And whereas also afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had employed the said defendant to make a survey of certain other estates of the said plaintiff for a certain reasonable, &c. he the said defendant undertook, &c. to make such survey in a good, &c. manner; and although the said plaintiff afterwards, to wit, on, &c. at, &c. paid to the said defendant a large sum of money, to wit, the sum of thirty-five pounds, for making the said last-mentioned survey, the same being a reasonable reward for that purpose: Yet, &c. (as in 1st Count.) And whereas, &c. (Money had and received; and breach.)

F. BULLER.

Declarat'on on
a special agree-
ment between
the plaintiffs
(two bricklay-
ers) against de-
fendants, who
were carpenters
and partners in
trade, that
plaintiffs should
do the bricklay-
er's work of a
church which
defendants were
under a contract
to build, and
that defendants
would pay the
plaintiffs.
Breach, de-
fendants did not
pay, &c.

LANCASHIRE, to wit. J. L. and S. L. complain against H. N. T. D. and R. D. being, &c. : for that whereas the said H. T. and R. before and at the said several times hereinafter mentioned, were, and from thence hitherto have been, and still are, copartners and builders, and partners and joint dealers in trade, and the art, trade, and business of carpenters and builders, during all the time aforesaid, as such partners and joint dealers in trade, have carried on, used, and followed, and still do carry on, use, and follow, to wit, at Liverpool in the county aforesaid: And whereas the said J. and S. long before, and at the several times hereinafter mentioned, were, and from thence hitherto have been, and still are, partners and bricklayers, and as partners and joint dealers in trade, during all the time aforesaid, have used, exercised, and carried on, and still use, exercise, and carry on the trade and business of bricklayers, to wit, at Liverpool aforesaid in the said county: And whereas they the said H. T. and R. as being carpenters, builders, and partners as aforesaid, and the art, trade, and business of carpenters and builders using and carrying on as aforesaid, at the time of making the agreement hereinafter mentioned, were employed in and about the building of a certain church and school-house then intended to be built at Liverpool aforesaid; and thereupon, on eighteenth June 1771, at Liverpool aforesaid in the said county, it was agreed by and between the said T. R. and H. of the one part, and the said plaintiffs of the other part, in manner and form following, that is to say, that the said plaintiffs should build the brick-work of the said intended church and school then going to be erected near the
at Liverpool aforesaid, with the walling round the same, &c. the mortar to consist of two loads of bauk-halts, and to each twenty measures of lime, for all the outward walls, the said D. and N. paying whatever the same might cost over and above eighteen-pence per load; the inside to consist of two loads of common sand to each twenty measures of lime; the cross joints of all the outward walls to be filled with mortar all the breadth and depth of the said bricks,

bricks, being brick-depth next the weather; the front to be worked; Flemish Bond the builder to find his own water; the whole to be completed in a workmanlike manner; all the walls to be reduced to solid measure of one brick length thick, for which the said defendants were to pay per yard; and all the hollows, the said defendants were to pay for the workmanship of the said hollows fourpence per yard reduced to brick length; and the said plaintiffs were to receive the sum of one hundred and fifty pounds when the church was raised, and the remainder on the delivery of their bills of parcels, and allow for discount two and a half per cent.; the chimnies to be paid for according to what they might deserve; and the said plaintiffs were to have four good bricklayers all the time the work was carrying on until the whole should be completed, and the bricklayers were to work all the wall, which exceeded a brick length, both inside and outside per line; and the said agreement being so made as aforesaid, they the said defendants (mutual promises): And the said plaintiffs in fact say, that they the said plaintiffs, in pursuance of the said agreement, afterwards, to wit, on first May 1772, did raise the said church, that is to say, at L. aforesaid in the said county: And the said plaintiffs further say, that the said church did contain divers, to wit, six thousand yards of solid measure of one brick length thick; and that the same, at and after the rate of two and a half per yard, amounted to a large sum of money, to wit, the sum of pounds of, &c. that is to say, &c.: And the said plaintiffs further say, that the said church did contain divers, to wit, two hundred yards of the workmanship of the reduced to brick length; and that the same, at and after the rate of fourpence per yard, reduced to brick length, amounted to another large sum of money, to wit, to the sum of pounds of, &c. that is to say, at, &c.; of which said premises they the said defendants afterwards, to wit, on the same day and year last aforesaid, there had notice: Yet the said defendants did not when the said church was raised, nor have they, &c. paid the said one hundred and fifty pounds, &c.: And the said J. and S. further say, that although they the said plaintiffs, on the same day and year aforesaid, at, &c. did deliver their bills of parcels for and concerning the said work to the said defendants, and the same amounted to a large sum of money, to wit, the sum of pounds of, &c. at, &c.; and although the said plaintiffs then and there were ready and willing, and offered to allow the said defendants the said sum of two and a half per cent. on the said sum of money due and owing to them as aforesaid, according to the form and effect of the said agreement, to wit, at, &c.: Nevertheless, not further regarding, &c. have not yet paid them the remainder of the said sum so due and owing from the said defendants to them the said plaintiffs as aforesaid, &c. (and other common Counts.)

F. BULLER.

inafter next mentioned, one A. B. had borrowed of the said plaintiff a large sum of money, to wit, the sum of two hundred pounds of lawful money of Great Britain, and to secure to the said plaintiff the repayment of the said sum of money so advanced and lent by the said plaintiff to the said A. B. aforesaid, together with lawful interest for the same, the said A. B. and Ann his wife had mortgaged to the said plaintiffs, for the term of one thousand years, a certain lot or portion of land, situate, lying, and being at, &c. in, &c. to wit, at, &c. in &c.: And whereas also before the making of the promise and undertaking of the said defendant hereinafter next mentioned, to wit, on, &c. at, &c. the said A. B. had occasion for, and had and proposed and offered to borrow of the said plaintiff the further sum of one hundred pounds of, &c. and had further proposed and offered to secure to the said plaintiff the repayment of the said last-mentioned sum of money, together with lawful interest for the same, by a further mortgage of the said portion or lot of land so as aforesaid mortgaged to the said plaintiff: And whereas also the said plaintiff was then and there minded and desirous to advance and lend the said sum of money last-mentioned unto the said A. B. upon the said last-mentioned security, provided that and in case the said lot should turn out and prove to be of sufficient worth and value for the securing the repayment of the said additional sum of one hundred pounds so about to be lent and advanced by the said plaintiff, together with lawful interest for the same; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. had notice: and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there retained and employed the said defendant, as such surveyor and valuer of land as aforesaid, to examine, survey, and enquire into and value the aforementioned lot or portion of land, and to make a report of the value thereof to the said plaintiff, and also to inform the said plaintiff whether the said portion or lot of land was of sufficient worth and value for the securing of the said plaintiff the repayment of the said additional sum of one hundred pounds, together with lawful interest for the same, in case the said plaintiff should lend and advance the said additional sum of one hundred pounds to the said A. B. upon a further mortgage or portion of land, for a certain reasonable hire or reward to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant (1) *would use all due care, diligence, and fidelity in enquiring into, examining, surveying, and valuing the said portion or lot of land, and making a proper and faithful report thereof, and informing the said plaintiff whether the said portion or lot of land was of sufficient worth or value for the securing of the said plaintiff the repayment of the said sum of one hundred pounds, together*

(In ad Count)

“act and conduct himself in his said last-mentioned employment of a surveyor or valuer of land,

faithfully, fairly, uprightly, and honestly, and would use all due care, diligence, and fidelity, to enquire into, examine, survey, and value the said last mentioned portion or lot of land, and in the making a proper and faithful and true report of the value thereof,”

with

Cc 4

means whereof the said plaintiff is wholly deprived of all security, as well for the repayment of the said sum of one hundred pounds so by him advanced to the said A. B. upon the said last-mentioned mortgage of the said portion or lot of land, as for the payment of the said large arrear of interest, to wit, the sum of forty pounds as aforesaid, for the said one hundred pounds, payable by virtue of the said last-mentioned mortgage, and the said plaintiff is in great danger of wholly losing the said sum of one hundred pounds, and also the interest which has already accrued and become due thereon; and the said plaintiff hath otherwise great damage and injury by means of the said premises, to wit, at, &c. And whereas, &c. &c. (2d Count same as the first, only omitting what is in Italic, and inserting in lieu thereof what is in the margin). And whereas, &c. &c. (go on with this Count same as 2d Count, till you come to this + mark, then proceed as follows): Yet the said defendant, not regarding, but contriving, &c. the said plaintiff in this behalf, and well knowing the said last-mentioned lot or parcel of land not to be of sufficient worth or value for the purpose last aforesaid, did not act and conduct himself in his said last-mentioned employment of a surveyor or valuer of land, fairly, faithfully, uprightly, and honestly, and did not use due care, diligence, and fidelity in enquiring, examining, enquiring into, and surveying the said lot or portion of land, and making a proper, faithful, and true report thereof; and on the contrary thereof, after the making of the said promise and undertaking last above-mentioned, to wit, on, &c. at, &c. falsely, fraudulently, deceitfully, and knowingly advised and represented to the said plaintiff, that the said last mentioned portion or parcel of land was of sufficient value and worth for the purpose last aforesaid, and thereby falsely, fraudulently, intentionally, and knowingly prevailed upon and induced the said plaintiff then and there to lend, &c. &c. (Go on with this Count same as 2d to the end.)

Drawn by MR. CROMPTON.

LONDON, to wit. J. R. complains of J. B. being, &c.: against a surveyor whom plaintiff had employed to enquire into, examine, and survey divers messuages and premises (which plaintiff was in treaty to buy), for making a false report of premises being in good repair, in consequence of which plaintiff bought the premises, which proved to be in a ruinous condition.

for that whereas the said J. B. before and at the time of the making the promises and undertakings hereinafter mentioned was, and continually from thenceforth hitherto hath been, and still is, a surveyor of houses and other buildings, and the occupation, business, and employ of a surveyor of houses and other business, during all the time aforesaid, hath used, exercised, and carried on, and still doth use, exercise, and carry on, that is to say, at London, to wit, in the parish of St. Mary-le-Bow, in the ward of Cheap; And whereas also before and at the making of the promise and undertaking of the said defendant hereinafter next mentioned, S. C. and N. D. were possessed of divers, to wit, two certain messuages or dwelling-houses, and one warehouse, and other premises, with the appurtenances, situate, lying, and being at the parish of St. Mary,

Mary, Aldermanbury, in the city of London aforesaid, for the residue and remainder of a certain term of years, whereof divers, to wit, fifty years were then to come and unexpired: And the said S. C. and N. D. being so possessed of the said premises, with the appurtenances, as aforesaid, they the said S. C. and N. D. before the making of the promise and undertaking hereinafter next mentioned, to wit, on the twentieth of September 1786, became willing, and proposed and offered to assign to the said plaintiff, all the right, title, and interest which they the said S. C. and N. D. had in and to the said premises, with the appurtenances, *for the residue and remainder of the said term*, for and in consideration of a large sum of money, to wit, the sum of four hundred pounds of, &c. to be therefore paid by the said plaintiff to the said S. C. and N. D. for the same, to wit, at London, &c.: And whereas also the said plaintiff was then and there minded and desirous to purchase the right and interest of the said S. C. and N. D. in and to the said premises, with the appurtenances, as aforesaid, so in the possession of the said S. C. and N. D. as aforesaid, for the said residue and remainder of the said term of years yet to come and unexpired as aforesaid, at and for the price or sum aforesaid, provided and in case that the said messuages or dwelling-houses and warehouses, with the appurtenances, should turn out and prove to be in good, sufficient, and substantial repair, to wit, at London, &c.; of all which said premises the said defendant afterwards, to wit, on the same day and year aforesaid, there had notice: and whereupon afterwards, to wit, on the day and year aforesaid, at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there retained and employed the said defendant, as such surveyor as aforesaid, to examine, survey, and enquire into the repair of the said messuages or dwelling-houses, warehouse, and other premises, with the appurtenances, and to make a report of the state and condition thereof to the said plaintiff, for a certain reasonable hire or reward to be therefore paid by the said plaintiff to the said defendant for the same, he the said defendant undertook, and to the said plaintiff then and there faithfully promised, that he the said defendant would use all due care, diligence, and fidelity in enquiring into, examining, and surveying the said messuages, warehouses, and other premises, with the appurtenances, and in making a proper and faithful report of the state and condition thereof: Nevertheless the said defendant, not regarding his said promise and undertaking by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not use proper care, diligence, and fidelity in enquiring into, examining, and surveying the said messuages, warehouses, and other premises, with the appurtenances, and the state or condition thereof, and in the making a proper report concerning the state and condition thereof, but wholly omitted and neglected so to do, and afterwards, to wit, on the same day and year aforesaid, at, &c. negligently, ignorantly, and unfaithfully, and without having used due and proper fidelity and diligence in enquiring into, examining, and surveying the

the said messuages, warehouses, and other premises, with the appurtenances, reported and represented to the said plaintiff, that the said messuages, warehouse, and other premises, with the appurtenances, were in good, sufficient, and substantial repair, *and would last without any material repairs for the residue and remainder of the said term of years so to come and unexpired*; whereas in truth and in fact, the said warehouse and the other premises were in a very bad condition, and in want of great and considerable repairs, and the said defendant might, could, and would have known that the said warehouse and other premises were so deficient in repairs, in case he had used due, reasonable, and fitting care and diligence in and about the enquiring into, examining, and surveying the same, and of the state and condition thereof, and the repairs of the same, to wit, at, &c.; and by reason and means of the premises, and of such neglect, inattention, and misconduct of the said defendant, he the said plaintiff, confiding and relying on the care, diligence, and fidelity of the said defendant in that behalf, and giving credit to the aforesaid report and representation, afterwards, to wit, on the twenty-ninth day of September 1786, was induced to buy and purchase, and did actually buy and purchase, the said messuages, warehouse, and other premises, with the appurtenances, for the residue and remainder of the said term of years then to come and unexpired, by afterwards, to wit, on the twenty-ninth day of September 1786, at London, &c. taking and accepting an assignment of the same from the said S. C. and N. D. to wit, at, &c.; by reason and means of which said premises he the said plaintiff hath been forced and obliged to lay out and expend, and hath actually laid out and expended, a large sum of money, to wit, the sum of two hundred pounds, for the necessary repairing of the said warehouse and other premises, with the appurtenances, so purchased as aforesaid, and which he the said plaintiff would otherwise not have done if the same warehouse and other the premises aforesaid had been in good, sufficient, and substantial repair, *and would have lasted without any material repairs for the residue and remainder of the said term of years*, as he the said defendant had so reported and represented as aforesaid, to wit, at London, &c. And whereas before and at the time of the making of the promise and undertaking of the said defendant herein after next mentioned, the said S. C. and N. D. were possessed of a certain other warehouse and other premises, with the appurtenances, situate, lying, and being at the parish of St. Mary, Aldermanbury, aforesaid, for the residue and remainder of a certain other term of years, whereof divers, to wit, fifty years, were then to come and unexpired, to wit, at London, &c. (From hence to the end same as 1st Count, omitting the words in Italic, and the words "messuages or dwelling-houses.") And whereas also (same as 2d Count, except stating the promise to be, to examine the *warehouse only*, and making the breach, &c. agreeable to that circumstance. Count for money paid, laid out, and expended, and common breach; damages one thousand pounds.)

Drawn by MR. GRAHAM.
To

To PAY MONEY, in Consideration of FORBEARANCE and DISCONTINUANCE of SUITS; of FORBEARING to SUE, and giving Time to PAY before ACTION commenced; and of DISCONTINUING the ACTION or SUIT when commenced.

LONDON, to wit. R. H. and W. R. complain of J. H. being, &c. : for that whereas heretofore, and before the making of the promise and undertaking hereinafter next mentioned, to wit, in the term of in the year of the reign of our said lord the now king, in the court of our said lord the king, before the king himself (the said court then and still being at Westminster in the county of Middlesex), by bill, without the writ of our said lord the now king, and by the judgment of the said court, recovered against one A. B. as well a certain debt of as also sixty-three shillings for his damages which he had sustained, as well by reason of his detaining the said debt as for his costs and charges by him about his suit in that behalf expended, whereof the said A. B. was convicted, as by the record and proceedings thereof, remaining in the said court of our said lord the king, before the king himself here, at Westminster aforesaid, more fully appears : And whereas the said plaintiffs afterwards, and after the obtaining of the said judgment, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. in the twenty-eighth year of the reign of, &c. for the obtaining the said debt and damages, costs and charges, so as aforesaid recovered by them the said plaintiffs, sued and prosecuted a certain writ of our said lord the king of *ieri facias* out of the said court of our said lord the king, before the king himself, the same court then and still being at Westminster aforesaid in the said county of Middlesex, directed to the sheriffs of London, whereby, amongst other things, the said sheriffs were commanded, that of the goods and chattels of the said A. B. in their bailiwick they should cause to be made the said sum of so as aforesaid recovered, and that they should have that money before our said lord the king, on, &c. next after, &c. to render to the said plaintiffs the debt and damages aforesaid ; by virtue of which said writ J. F. and M. B. esquires, being sheriffs of London aforesaid, and to whom the said writ was delivered, afterwards, and before the return thereof, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. seized and took possession of divers goods and chattels of the said A. B. which were in the bailiwick of the said sheriffs, of great value, to wit, of the value of one hundred pounds of lawful money of Great Britain for the purpose aforesaid in that behalf. *And whereas afterwards, and whilst the said sheriffs were so in possession of the said goods and chattels*

chattels of the said *A. B.* under and by virtue of the said writ, and before the sale thereof, to wit, on, &c. a certain commission of bankruptcy, sealed with the seal of Great Britain, in due manner issued out of his majesty's high court of chancery (the said court then and still being at Westminster in the said county of Middlesex), against the said *A. B.* directed to certain commissioners therein named, according to the form of the statute in such case made and provided; and thereupon the said *A. B.* was, under and by virtue of the said commission, afterwards, to wit, on, &c. adjudged and declared before and at the time of issuing out of the said commission against him, a bankrupt, within the true intent and meaning of the several statutes then in force concerning bankrupts, some or one of them, to wit, at, &c.: And whereas afterwards, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. he the said defendant was duly chosen sole assignee of the estate and effects of the said *A. B.*; and thereupon all and singular the goods and chattels, amongst other things, of the said *A. B.* at the time he became a bankrupt, or at any time since, were in due manner, and according to the true intent and meaning of the said statutes in that case made and provided, afterwards, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. assigned unto the said defendant; and the said defendant being such assignee as aforesaid, and so entitled as aforesaid; and the said sheriffs being in possession of the said goods and chattels of the said *A. B.* under and by virtue of the said writ of *fieri facias* as aforesaid, sued out and prosecuted by the said plaintiffs as aforesaid; and a question then and there arising, whether he the said defendant, as such assignee as aforesaid, was or was not entitled to the said goods and chattels, he the said defendant afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, being assignee as aforesaid, would withdraw their aforesaid execution, and discharge and acquit the said sheriffs from keeping any longer possession of the said goods and chattels of the said *A. B.* so taken in execution as aforesaid, and cause to be delivered up the said goods and chattels to him the said defendant, assignee as aforesaid, undertook, and then and there faithfully promised the said plaintiffs, to pay to them the sum of ten pounds, and also to pay and satisfy the said plaintiffs their costs and charges by them expended in entering up their aforesaid judgment so as aforesaid obtained, and also to pay and satisfy them the said plaintiffs the sheriffs poundage, and other expences, costs, and charges of levying the aforesaid execution: And the said plaintiffs in fact say, that they the said plaintiffs, relying on the said promise and undertaking of the said defendant, afterwards, to wit, on, &c. at, &c. did withdraw their aforesaid execution, and did then and there discharge and acquit the said sheriffs from keeping any longer possession of the said goods and chattels so taken in execution, and did then and there cause to be delivered up the said goods and chattels to the said defendant, as such assignee as aforesaid: And

the said plaintiffs in fact further say, that the said costs and charges by them expended in entering up the aforesaid judgment so as aforesaid obtained, and also the sheriffs poundage, and the other expences, costs, and charges of levying the aforesaid execution, amounted to a large sum of money, to wit, the sum of twenty pounds of lawful money of Great Britain, to wit, at, &c. ; whereof the said defendant afterwards, to wit, on, &c. at, &c. there had notice ; whereby the said defendant became liable to pay to the said plaintiffs the said sum of ten pounds, and also the said sum of twenty pounds, amounting together to the sum of thirty pounds, according to the form and effect of the said promise and undertaking so by the said defendant, assignee as aforesaid, made as aforesaid. And whereas, &c. (same as the 1st Count, omitting any mention of the bankruptcy, and defendant being assignee, and what is in *Italic*. Add the common Counts ; and common breach.)

Drawn by MR. GRAHAM.

GLAMORGANSHIRE. Herbert Evans, esquire, complains of T. Thomas, gentleman, one of the attornies of the court of our said lord the king, before the king himself, present here in court in his own proper person : for that whereas, before the time of the making the promise and undertaking hereinafter next mentioned, to wit, on the thirty-first December 1780, one Peter Birt esquire, was sheriff of the county of Glamorgan, and the said T. was then and there the under-sheriff of the said P. B. of the said county of G. lawfully and in due manner constituted and appointed : And whereas also the said H. before the time of the making the promise and undertaking hereinafter mentioned, to wit, on the said thirty-first December 1780, at the parish of Lautwit near Neath in the said county of G. had taken and distrained certain cattle, goods, and chattels of one R. W. of the value of fifty pounds, then and there found, and being for and in the name of a distress for certain arrears of rent, to wit, the sum of pounds for half year's rent then remaining due and owing from the said R. W. to the said H. for rent of certain premises which the said R. W. then held of the said H. under and by virtue of a certain demise to him thereof made by the said H. ; which said cattle, goods, and chattels, so taken as aforesaid, the said H. according to the laws and customs of the realm, detained until the said P. B. esquire, so being sheriff of the said county, afterwards, to wit, on the same day and year aforesaid, at, &c. upon the complaint of the said R. W. to the said P. B. so being sheriff as aforesaid, in that behalf made, under colour of his said office of sheriff, caused the said cattle, goods, and chattels to be replevied and delivered to the said R. W. of and for the taking of the said cattle, goods, and chattels, the said R. W. afterwards, to wit, at the tenth county court of the said P. B. sheriff of the county aforesaid, held for the said county on Wednesday the twenty-ninth November 1780, without the writ of the said lord the

Declaration against an attorney, the under-sheriff of the county of G. who promised, that in consideration that plaintiff would forbear from further prosecuting his suit against the sheriff of G. for having taken insufficient pledges in replevin, he would pay plaintiff as well the debt due to him from the plaintiff in replevin his costs of defending that action, as also his costs in the suit against the sheriff.

Record of plaint
certified to jus-
tices of great
sessions.

Judgment de re-
torno habendo.

Sheriff's return
to writ de retorno
habendo, that
goods, &c. were
elogned.

the king, levied his plaint against the said H. ; and the said plaint afterwards, by virtue of a certain writ of our lord the now king sent to the said P. B. so being sheriff as aforesaid, was by him recorded in his court, and the record thereof, in all things by him certified, had and sent to and before our lord the king's justices of the great sessions of the county of G. on the seventeenth April 1781, being the first day of our lord the king's great sessions next held in and for the said county. and such proceedings in and upon the said plaint of the said R. W. so recorded, certified, had, and sent by the said P. B. so being sheriff as aforesaid, were afterwards had in the said court of great sessions; that afterwards, to wit, in the same sessions of the said court of great sessions, it was considered by the same court that the said R. W. should take nothing by his writ, but that he should be in mercy for his false claim therein; and that the said H. should thereupon go without day; and that he should have a return of the said cattle, goods, and chattels, to hold to him irrepleviable for ever; and that he should also recover against the said R. W. seven pounds seven shillings and nine pence for his costs and charges by him about his suit in that behalf expended; and thereupon the said H. afterwards, to wit, on the twenty-third April 1781, sued forth out of the said court of great sessions a certain writ of *retorno habendo*, directed to the then sheriff of the county of G. to wit, Charles Bowen, esquire, commanding him to cause the said cattle, goods, and chattels, to be returned to the said H. to hold to him irrepleviable for ever; at the return of which said last-mentioned writ the said C. B. esquire, certified to the said justices of the said court of great sessions, that, before his receiving that writ, the goods and chattels aforesaid were by the said R. W. elogned to places to him the said sheriff unknown, so that he was not able to make any return thereof to the said H. as it was thereby commanded him: And whereas the said P. B. at the time he was sheriff as aforesaid, not regarding the statute in such case made and provided, nor the duty of his said office, but neglecting the same, did not, before the replevying the said cattle, goods, and chattels, so distrained as aforesaid to the said R. W. take from him pledges sufficient, as well for the said cattle, goods, and chattels being returned, if a return should be adjudged, as for the said R. W.'s prosecuting his said suit with effect, which he the said P. B. so being sheriff as aforesaid, ought to have done, according to the form of the statute in such case made and provided, but wholly omitted so to do; by reason of which the said H. was wholly deprived of his said cattle, goods, and chattels so distrained by him as aforesaid, and of his said rent so due to him as aforesaid, and of the whole benefit of his said distress and judgment: And whereas also the said H. by reason of the premises aforesaid, and of the negligence and misconduct of the said P. B. whilst he was so sheriff as aforesaid, afterwards, and before the making of the promise and undertaking hereinafter mentioned by the said Thomas, to wit, in Hilary term in the twenty-third year, &c. impleaded the said P. B. in the court

court of our said lord the king, before the king himself, then being at Westminster in the county of N. in a certain plea of trespass on the case, to his the said H.'s damage of one hundred pounds, for the obtaining and recovering his damages by him the said H. sustained by reason and on account of the insufficiency of the pledges taken by the said P. B. whilst he was so sheriff as aforesaid, upon the making of the said replevin and delivery to the said R. W. of the aforesaid cattle, goods, and chattels so distrained by the said H. as aforesaid, upon the said plaint so levied against the said H. as aforesaid; upon which said plea in the said court of our said lord the king, before the king himself, at Westminster aforesaid, such proceedings were had in the same court that issue had been joined between them the said H. and the said P. B. to be tried by a jury of the said county of G.: And whereas, on the fifteenth March 1784, at C. in the said county of G. whilst the said last-mentioned suit was depending, and before the trial of the said issue therein joined between the said H. and the said P. B. the said Thomas (he the said Thomas having been such under-sheriff to the said P. B. of the said county of G. aforesaid), in consideration that the said H. at the special instance and request of the said T. would cause the trial of the issue so joined between himself the said H. and the said P. B. in the plea aforesaid, to be stayed, and would not any further prosecute his said suit, but would desist from all further prosecution against the said P. B. in the said plea of trespass on the case, undertook, and to the said H. then and there faithfully promised, that he the said T. would pay to the said H. as well the said sum of pounds so due from the said R. W. to the said H. for rent as aforesaid, as also so much money as should be due to him the said H. for his damages, costs, and charges by him sustained as well in and about his defence of the said plaint so levied by the said R. W. against the said H. as aforesaid, as in and about the prosecuting of his said suit against the said P. B.: And the said H. in fact further saith, that he, confiding in the said promise and undertaking of the said T. in form aforesaid made, did cause the trial of the aforesaid issue, so joined between himself the said H. and the said P. B. in the plea aforesaid, to be stayed, and at and since the making of the said promise and undertaking of the said T. hath not further prosecuted his said suit against the said P. B. for the cause aforesaid; but, at the special instance and request of the said T. hath forborne, and still doth forbear, to prosecute the same any further against the said P. B.; and all process thereupon against the said P. B. is ceased, to wit, at C. aforesaid in the said county; whereof the said T. afterwards, to wit, on the same day and year last aforesaid, there had notice: And the said H. in fact further says, that the costs of him the said H. sustained in and about his defence of the said plaint so levied by the said R. W. against him the said H. as aforesaid, and in and about the prosecuting of the said suit against the said P. B. amount to a large sum of money, to wit, the sum of pounds of lawful, &c. to wit, at, &c.; whereof the said T. afterwards, to wit, on the same, &c. there had

had notice : Yet the said T. not regarding, &c. but contriving, &c. hath not yet paid to the said H. either the said sum of pounds so due from the said R. W. to the said H. for rent as aforesaid, or the said sum of pounds, or either of them, or any part thereof (although often since requested so to do) ; but to pay either the said sum of pounds, or the said sum of pounds, or either of them, or any part thereof, to the said H. he the said T. hath hitherto wholly refused, and still doth refuse, to wit, at, &c. (Money had and received, and ditto paid, &c.)

Drawn by MR. CROMPTON.

Declaration by
original, in
consideration
of forbearance
to distrain the
goods of J. S.
promise to pay
the rent.

P. W. late of, &c. and W. G. late of, &c. in the said county, were attached to answer to the masters, &c. of the college of St. John the Evangelist in the university of Cambridge, in a plea of trespass, &c.; and thereupon the said masters, &c. by A. B. their attorney, complain : for that whereas one J. S. of H. in the said county of, &c. for a long time, to wit, continually from and after the feast of the Annunciation of the Blessed Virgin Mary A. D. 1740, until and upon the feast of St. Michael the Archangel A. D. 1750, and from thence until and at and after the making of the promise and undertaking of the said P. and W. hereafter mentioned, enjoyed a certain farm, consisting of a messuage, and certain outhouses thereto belonging, and divers, to wit, twenty acres of land, with the appurtenances, of the said masters, &c. situate, lying, standing, and being at H. aforesaid, and, during all that time there held the same of the said masters, &c. as their tenant thereof, under and by virtue of a demise thereof before then made by the said masters, &c. at and under the yearly rent or sum of thirty pounds, clear of all manner of taxes and outgoing whatsoever, payable from the said J. S. to the said masters, &c. at the feast of St. M. the Archangel and the Annunciation of the Blessed Virgin Mary in every year during all that time, by even and equal portions, and that two hundred and seventeen pounds of the aforesaid rent, for seven years and part of another half year, ended at and upon the feast of St. M. the Archangel A. D. 1750 aforesaid, at that feast in the year last aforesaid, and also at the time of the making of the promise and undertaking of the said P. and W. hereafter next mentioned, were due and owing, and in arrear, from the said J. S. to the said masters, &c. to wit, at H. aforesaid; and the said J. S. at the time of the making of the said promise and undertaking of the said P. and W. hereafter next mentioned, and afterwards, was and continued in possession of the said demised premises under the said demise, and, at the time of the making of the said promise and undertaking, and afterwards, had divers cattle, goods, and chattels levant and couchant in and upon the said demised premises, and were then liable to be distrained by the said masters, &c. for the said arrears of rent ; and the said J. S. so having enjoyed and continued the said demised premises under the said demise, and the rent for the same so being due, owing, in
arrear

arrears, and unpaid to the said masters, &c. ; and the said J. S. being so possessed of the said demised premises, with the appurtenances, and so having divers cattle, goods, and chattels levant and couchant in and upon the said demised premises, which were so liable to be distrained as aforesaid, the said masters, &c. on the fourth day of October A. D. 1750 aforesaid, at H. aforesaid, were about, by one D. Bolson there then bailiff, to distrain the said cattle, goods, and chattels of the said J. S. then being so levant and couchant on the said demised premises, and then being so liable to be distrained for the arrears of rent ; of all which premises the said P. and W. then and there had notice : and thereupon the said P. and W. then and there, that is to say, on, &c. in consideration that the said masters, &c. at the special instance and request of the said P. and W. would not distrain the said cattle, goods, and chattels, but would desist therefrom, and from giving the said J. S. any trouble, by distress or otherwise, for or on account of the said arrears of rent, until Candlemas then next, undertook, &c. the said masters, &c. to pay them the said sum of two hundred and seventeen pounds so due and in arrear to them, at, &c. next after the making of the said promise and undertaking, and to make the greatest payment at, &c. : And the said masters, &c. aver, that they confiding, &c. of the said P. and W. they the said masters, &c. did not distrain the said cattle, &c. or any part thereof, nor have they at any time afterwards hitherto given the said J. S. any trouble, by distress or otherwise, for or on account of the said arrears of rent, or any part thereof, but, at the said instance of the said P. and W. have always hitherto wholly desisted therefrom ; of all which said premises the said P. and W. at H. aforesaid, had due notice : Yet the said P. and W. not regarding, &c. (Common conclusion for the two hundred and seventeen pounds.

CUMBERLAND, to wit. Jery Wife v. Richard Miller : Declaration (on for that whereas, before and at the time of the making of the promise and undertaking of the said Richard hereafter next mentioned, to wit, on, &c. at, &c. one T. M. was justly and truly indebted to the said plaintiff in a large sum of money, to wit, the sum of sixteen pounds of lawful money of Great Britain, *for divers goods, wares, and merchandizes before that time sold and delivered by the said plaintiff to the said T. M. ; and the same being and remaining due and unpaid to the said plaintiff*, he the said plaintiff, in order to procure and compel payment of the same, afterwards, and before the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, in Easter term in the twenty-ninth year of the reign of, &c. sued and prosecuted out of the court of our said lord the king, before the king himself (the said court then and still being held at and the promise of defendant, that he or his executors should pay so much by instalments for debt and costs, in consideration of discontinuing the suit, and setting the original defendant at liberty ; and goes for two instalments.

Westminster in the county of Middlesex), a certain writ of our said lord the king called a latitat, directed to the sheriff of the county of C.; by which said writ the said sheriff was commanded, that he should take the said T. M. if he should be found in his bailiwick, and him safely keep, so that he might have his body before our said lord the king at Westminster, on, &c. next after, &c. then next following, to answer the said plaintiff in a plea of trespass, and also to a bill of the said plaintiff against the said T. M. for forty pounds, upon promises, according to the custom of the said court of our said lord the king, before the king himself, to be exhibited; and that the said sheriff should have there then that writ; which said writ afterwards, and before the delivery thereof to the said sheriff of C. as hereafter is mentioned, to wit, on, &c. at, &c. in, &c. was duly indorsed for bail for sixteen pounds, by virtue of an affidavit of the cause of action before then made and duly filed of record in the said court of, &c. according to the form of the statute in such case made and provided, that the said T. M. might be by force thereof arrested by the said sheriff, and held to bail for sixteen pounds there; which said writ, so indorsed as aforesaid, afterwards, and before the return thereof, and before the making of the said promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. was delivered unto one T. W. who then and at and after the arresting of the said T. M. by virtue of the said writ as hereinafter mentioned was sheriff of the said county of C. to be executed in due form of law; by virtue of which said writ, the said T. W. afterwards, and before the return of the said writ, and before the making of the promise and undertaking of the said defendant hereafter mentioned, to wit, at, &c. in, &c. and within the bailiwick of the said then sheriff, took and arrested the said T. M. by his body, and then and there kept and detained him in custody, at the suit of the said plaintiff, for the cause aforesaid, by virtue of the said writ; of all which said premises the said defendant afterwards, to wit, on, &c. at, &c. there had notice: and thereupon, in consideration that the said plaintiff, at the special instance and request of the said defendant, would (1) *discharge the said T. M.* out of the custody of the said sheriff of C. and set the said T. M. at liberty, and would then and there permit him to go at large, and would not proceed any further against him in the suit aforesaid, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant, or his executors, should and would pay to the said plaintiff the sum of sixteen pounds in full for the said defendant, so due and owing from the said T. M. to the said plaintiff, and the costs then incurred in the said suit, (2) *to pay four pounds every year* until the said sum of sixteen pounds should be paid: And the said plaintiff, in fact says, that he, considering in the said promise and undertaking of the said defendant afterwards, to wit, on, &c. at, &c. in, &c. at the said instance and request;

(In ad Count)
(1) "permit
and procure the
said T. M. to be
discharged"

(In ad Count)
(2) "in manner
following, to
wit, four pounds
every year"

did
etc.

(1) *did discharge the said T. M.* out of the custody of the said then sheriff; and did then and there set the said T. M. at liberty, and permit him to go at large, and did not any further proceed against him in the suit aforesaid, and hath not, at any time since the making of the said promise and undertaking of the said defendant as aforesaid, hitherto proceeded in the said suit; whereof the said defendant there had due notice: And the said plaintiff in fact further saith, that (2) after the making of the said promise and undertaking of the said defendant, and before the commencement of this suit, to wit, on, &c. at, &c. a great part of the said sum of sixteen pounds in the said promise and undertaking mentioned, to wit, the sum of eight pounds, being at and after the rate of four pounds by the year, for two years elapsed since the making of the said promise and undertaking, and ending and ended on the day and year last aforesaid, became and was then and there due and payable from the said defendant to the said plaintiff, according to the tenor and effect of the said promise and undertaking of the said defendant; whereof the said defendant afterwards, to wit, on, &c. had notice. *And whereas*, before and at the time of the making of the promise and undertaking of, &c. &c. (Finish this Count same as first, only omitting what is in Italic, and inserting what is in the margin.) (3) And whereas, before and at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. one T. M. was justly and truly indebted to the said plaintiff in another large sum of money, to wit, the sum of sixteen pounds of, &c. for the recovery of which the said plaintiff had then and there commenced a certain action or suit at law in the court of, &c. here against the said T. M. and the said plaintiff had incurred and been put to certain costs and charges in the prosecution of the said suit and action: and thereupon afterwards, and whilst the said suit was depending in the said court here, and before the same was ended and determined, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, would prevent any further proceedings against him the said T. M. in the aforesaid suit, he the said defendant undertook, &c. to pay to him the said plaintiff the sum of sixteen pounds of, &c. in full for the said debt and costs of the said suit; And the said plaintiff in fact says, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did immediately upon the making thereof, at the request of the said defendant, prevent, and always from the time of the making of the said last-mentioned promise and undertaking hitherto hath prevented, any further proceedings being had against the said T. M. in the said action or suit so by him commenced as last aforesaid, and that he the said plaintiff hath always from thence hitherto forbore and wholly desisted, and still doth forbear and wholly desist, from suing the said T. M. on the occasion aforesaid, to wit, at, &c.; which the said defend-

(In 2d Count)
(1) " permit and procure the said T. M. to be discharged "

(In 2d Count)
(2) " after the said discharge, and "

ad Count same as first, only omitting the cause of action, and the mention of executors in the promise.

(3) 3d Count is more general, omitting the arrest, and only stating, that plaintiff had instituted a suit, and a promise by the defendant to pay, omitting the instalments, in consideration of discontinuing the former suit and general forbearance,

ASSUMPSIT SPECIAL.—TO PAY MONEY,

ant there well knows. (Add the money Counts; account stated; and common conclusion.)

THOMAS BARROW.

Cafe and Opinion on the Agreement or Note.

" I Richard Miller, or his executors,
" promise to pay Jerry Wise the sum of
" sixteen pounds, to pay four pounds
" every year till the above sum is paid,
" as witness my hand,

" RICHARD MILLER.

" Witness, WILLIAM ROGER."

Plaintiff is a grocer, and lives at, &c. and sold groceries to one Thomas Miller, son of the defendant, to the amount of sixteen pounds, who lived at A. in Scotland; the said Thomas Miller becoming insolvent fled from his house in Scotland to his father's in Cumberland, where he for some time secreted himself from his creditors; however, plaintiff at last procured him to be arrested, by virtue of a *latitat* issued on twenty fifth May 1787, at his father's house, ten miles from any place where stamps could be procured. Upon the said Thomas Miller's being arrested, he was threatened to go to jail, but, rather than permit him, the defendant offered plaintiff the sum of sixteen pounds, payable in four years in full for debt and costs, in case he would release the defendant's son, which plaintiff agreed to accept; but there being no stamps, or any person capable of drawing a proper note of hand, defendant wrote the above undertaking on plain paper. Upon defendant signing the above, the plaintiff set T. M. at liberty who soon went and still continues abroad; the present defendant sent the first payment by his youngest son, and paid the same in part of the said sixteen pounds, and which was indorsed on the said undertaking.

It is presumed, that though the undertaking is not on stamp, and wants the words *value received*, yet it is good within the statute 29. Charles 2. ch. 3. and may be stamped, and

that the words *value received* are not necessary, as it can be clearly proved for what consideration the undertaking was given.

I think the above note good as a promissory note within the statute 3. and 4. Ann. ch. 9.; or coupled with the consideration, it may be given in evidence, in a special action upon the case, stating such consideration. If it be declared upon as a promissory note, it cannot be given in evidence without a proper stamp; and not having that now, it is not permitted to be stamped but on paying ten pounds, by the statute 24. Geo. 3. c. 7. f. 8. which it cannot be with the plaintiff's while to pay. I would therefore advise the plaintiff to declare specially upon the original consideration (which, I am of opinion, will be deemed sufficient to support an action, as a *consideration of forbearance* to sue the defendant's son for the debt and costs, as a satisfaction for which the note is stated to be given), and give the note in evidence as an agreement entered into upon such consideration; as an agreement, however, is required to bear a six shilling stamp (by statute 23. Geo. 3. c. 58.) and not having it, it cannot be given in evidence, unless on payment of five pounds, under the 12th section of that act, adopting the provisions contained in the 11th section of 5. and 6. William and Mary, c. 21. unless it comes within the meaning of the excepted proviso in the before mentioned statute of 23. G. 3. c. 58. f. 4. as a " memorandum or agreement, the matter of which does not exceed twenty pounds," which I incline to think it does, and then no stamp is required to make it evidence. I have therefore ventured to declare accordingly. If, notwithstanding this, a six shilling stamp should be required, and the defendant will proceed to try the action, it may be stamped at any time before the trial on payment of five pounds.

THOMAS BARROW.

LANCASHIRE, to wit. J. L. v. E. K. and E. B. : for that whereas, before the making of the promise and undertaking hereafter mentioned, one A. B. was tenant for years, to wit, from year to year, of a certain messuage or dwelling-house, and a close of land, with the appurtenances, of the said plaintiff, at and under a certain yearly rent, to wit, the yearly rent of eighteen pounds of, &c. therefore payable to the said plaintiff; and, being such tenant as aforesaid, he the said A. B. during his said tenancy, and before the making of the said promise and undertaking of the said defendants hereafter next mentioned, assigned over all his estate and interest of and in the said premises to the said defendants, without the leave or licence, and against the will of the said plaintiff; under which said assignment the said defendants entered into the possession of the said premises; and the said defendants being so possessed thereof heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would then and there accept and continue them as tenants of the said premises in the place and stead of the said A. B. upon the same terms that the said A. B. had theretofore had and held the same, they the said defendants undertook, and then and there faithfully promised the said plaintiff, to pay all arrears of rent then due and owing from the said A. B. to the said plaintiff, for and on account of the same premises, within a reasonable time: And the said plaintiff avers, that although he the said plaintiff, confiding in the said promise and undertaking of the said defendants, did then and there accept and continue, and from thenceforth hitherto hath continued them tenants of the same premises in the place and stead of the said A. B. upon the terms aforesaid; and although, at the time of the making of the promise and undertaking, there was in arrear and unpaid from the said A. B. to the said plaintiff, for and on account of the said demised premises, a large sum of money, to wit, the sum of eighteen pounds of, &c.; of which the said defendants then and there had notice; and although they the said defendants have since paid a part to the said plaintiff, to wit, the sum of nine pounds of, &c. on account thereof: Yet the said defendants, not regarding, &c. but contriving, &c. the said plaintiff in this behalf, have not, nor hath either of them, as yet paid the residue of the said arrears of rent, amounting in the whole to a large sum of money, to wit, the sum of nine pounds of, &c. or any part thereof, to the said plaintiff (although a reasonable time for that purpose has long since elapsed, and although so to do they the said defendants afterwards, to wit, on, &c. at, &c. were requested by the said plaintiff); but they so to do have, and each of them hath, hitherto wholly refused, and still do refuse, and the same is wholly unpaid to the said plaintiff, to wit, at, &c. And whereas, before the making of the promise and undertaking hereafter next mentioned, one A. B. was tenant for years, to wit, from year to year, of a certain other messuage or dwelling-house, and a close of land, with the appurtenances, of him the said plaintiff, situate at, &c. under a certain demise there-

Declaration in special *assumpsit* by a landlord against the assignees of his tenant's farm and goods, on a promise by them to pay all arrears of rent at the time of the assignment; if he would not obstruct their taking possession, nor distrain, &c. but permit him to sell the stock: part of the rent had been paid.

2d Count, omitting to state that the assignment was made without the licence of plaintiff, and that part was paid.

of theretofore made to him by the said plaintiff at and under a certain yearly rent, to wit, the yearly rent of eighteen pounds of, &c. whereof, at the time of the assigning of the said demised premises hereafter next mentioned, a large sum, to wit, the sum of eighteen pounds, was due and in arrear from the said A. B. to the said plaintiff, to wit, at, &c.; and the said A. B. so being such tenant, and the said rent so being due from him for the said premises as aforesaid, he the said A. B. during the continuance of the said demise, and before the making of the promise and undertaking of the said defendants hereafter next mentioned, assigned over all his estate and interest of and in the said last-mentioned premises, together with all and singular the goods, chattels, and stock of him the said A. B. upon the same, to the said defendants; under which assignment the said defendants accordingly entered upon and took possession of the said last-mentioned assigned premises; and being so thereof possessed, heretofore, to wit, on, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would not dispute the said assignment, and would forbear to disturb the said possession of the said last-mentioned demised premises, or the goods, chattels, and stock thereon, for or on account of the arrears of rent so due to him for the same as aforesaid, they the said defendants undertook, &c. to pay to him all the said arrears of rent so due and owing to him for and in respect of the said demised premises as aforesaid, when they the said defendants should be thereto afterwards requested: And the said plaintiff in fact says, that he, confiding in the said last-mentioned promise and undertaking of the said defendants by them made as aforesaid, did not dispute the said assignment, but did then and there forbear, and from thence hitherto hath forborne, to disturb their said possession of the said last-mentioned demised premises, and the goods, chattels, and stock thereon, for and on account of the said arrears of rent so due to him for the same as aforesaid, to wit, at, &c.; and although they the said defendants have since paid to the said plaintiff a part, &c. &c. (Conclude as in 1st Count.) And whereas, at the time of the making of the promise and undertaking hereafter next mentioned, the said defendants, by assignment from the said A. B. were possessed of and in a certain other messuage and close, with the appurtenances, situate in, &c. (whereof the said A. B. at the time of such assignment, was tenant, to wit, from year to year, to the said plaintiff, at a certain yearly rent, to wit, the yearly rent of eighteen pounds, therefore payable to the said plaintiff, of which said rent a large arrear, to wit, the sum of eighteen pounds, was then and there due to the said plaintiff), and also of certain goods, chattels, stock, and crop upon the said messuage, close, and premises, liable to the distress of the said plaintiff for the said arrears of rent; and the said defendants, being so possessed as aforesaid, heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendants, would forbear to distrain the goods, chattels, stock, and crop upon

3d Count, in consideration plaintiff would forbear to distrain, and would not prevent the sale of them by defendants.

the said assigned premises for the said arrears of rent, and would not prevent their making sale of them, they the said defendants undertook, &c. the said plaintiff, to pay to him the said arrears of rent, when they the said defendants should be thereto afterwards requested: And the said plaintiff avers, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did forbear, and from the making thereof hitherto hath forbore, to distrain the said goods, chattels, stock, and crop upon the said assigned premises, for the cause aforesaid, and did not prevent, nor from thence hitherto hath prevented, the sale thereof by them the said defendants, to wit, at, &c.: Yet the said defendants, not in the least regarding, &c. but contriving, &c. the said plaintiff in this behalf, hath not as yet paid the said arrears of rent to the said plaintiff, or any part thereof (although so to do they, &c.); but they so to do, &c. (Add Counts for use and occupation; money had and received; an account stated; and common conclusion.)

T. BARROW.

LONDON. *J. J.* J. W. Sir W. D. bart. J. D. and G. D. complain of F. D. and M. his wife, being, &c.: for that whereas one J. C. and N. C. on, &c. were jointly and separately bound to the said plaintiffs, by their certain writing-obligatory, in the sum of four hundred pounds, with a condition for the payment of two hundred and six pounds on, &c. then next following, which said two hundred and six pounds were not paid to the said plaintiffs, or any or either of them, on, &c. then next following, according to the condition of the said writing-obligatory, whereby the said writing-obligatory became forfeited to the said plaintiffs: And whereas the said N. afterwards, to wit, on, &c. died intestate (the said four hundred pounds being then unpaid to the said plaintiffs, or to any or either of them), after whose death administration of all the goods and chattels, which were belonging to the said N. at the time of his death, was committed by the late (a) judge for the proving of wills and granting of administration to the said M. whilst she was sole; by virtue whereof, she the said M. became possessed of the said goods and chattels which were belonging to the said N. at the time of his death, and the said goods and chattels became liable to pay the just debts of the said N.: And whereas the said plaintiffs, for the sooner obtaining of the debt aforesaid, did intend to put the said writing-obligatory in suit against the said M. as administratrix of the goods and chattels of the said N. for the recovery of the aforesaid four hundred pounds, and of such their intentions they the said plaintiffs afterwards, to wit, on, &c. gave notice to the said M. whilst she was sole: whereupon the said M. whilst she was sole, afterwards, to wit, on, &c. in consideration of the premises, and also in consideration that the said plaintiffs, at the special instance and request of the said M., would forbear to put the said writing-obligatory in suit against the said M. she the said M. undertook, and then

Declaration, in consideration plaintiff would not put a bond in suit against defendant whilst sole as administratrix, she promised to pay both principal and interest 'on' said bond' in a short time.

Action brought after defendant's inter-marriage.

(a) *Quarry*, If the name and title of the person, and of what ecclesiastical court, should not be set out.

D d 4

and

and there faithfully promised the said plaintiffs, that the said M. would immediately pay the interest then due upon the said writing-obligatory to the said plaintiffs; and would also pay them the principal money due upon the said writing-obligatory within a reasonable time afterwards: And the said plaintiffs in fact say, that they, confiding in the said promise and undertaking of the said M. whilst she was sole, in form aforesaid-made, have always, from the time of the making of the said promise and undertaking, hitherto abstained and forbore, and still do abstain and forbear, to put the said writing-obligatory in suit against the said Mary. And the said plaintiffs in fact further say, that the interest aforesaid, then due upon the said writing-obligatory at the time of the making of the said promise and undertaking, amounted to thirty-four pounds; whereof the said M. then and there had notice: Yet the said M. whilst she was sole, and the said F. and M. after the marriage celebrated between them, not regarding, &c. but contriving, &c. to deceive and defraud the said plaintiffs in this behalf, have not paid, nor hath either of them as yet paid, the said principal money, and interest due therefore upon the said writing-obligatory, amounting in the whole to, &c. (although to do this the said M. often afterwards whilst she was sole, and the said F. and M. after the marriage celebrated between them, to wit, on, &c. by the said plaintiffs were requested); but they to pay the same have hitherto wholly refused, and still refuse, &c.

Declaration in consideration of plaintiff's giving further time for the payment of the principal of a bond, defendant promised to pay increase of interest.

LONDON, to wit. James Barber complains of William Brander, being in the custody, &c. of a plea of trespass on the case, &c.: for that whereas the said William, before the making of the promise and undertaking of him the said William hereafter next mentioned, to wit, on the fourth day of May in the year of Our Lord 1767, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, made his certain writing-obligatory, sealed with the seal of the said defendant, the date whereof is the day and year aforesaid, and thereby became held and firmly bound to the said plaintiff in the sum of five hundred and eighty pounds of good and lawful money of Great Britain, to be paid to the said plaintiff when he the said defendant should be thereto afterwards requested, with a condition thereunder-written, that if the said William Brander, his heirs, executors, or administrators, should and did well and truly pay, or cause to be paid, unto the said plaintiff, his executors, administrators, or assigns, the full sum of two hundred and ninety pounds of good and lawful money of Great Britain, within three years then next ensuing from the first day of February then last past, together with interest for the same, at the rate of two pounds ten shillings per cent. per ann. commencing the first day of February aforesaid, then that obligation to be void, otherwise to remain in full force and virtue. And whereas, before the making of the promise and undertaking of the said William hereafter next mentioned, and before the expiration of the said three years in the said condition of the said writing-obligatory mentioned,

mentioned, that is to say, on the first day of July A. D. 1769, at L. aforesaid, in the parish and ward aforesaid, the principal sum of two hundred and ninety pounds in the condition of the said writing-obligatory mentioned then being unpaid, he the said James gave notice to the said William to pay the principal sum, and the interest thereof, at the expiration of the time limited and appointed in and by the condition aforesaid, according to the tenor thereof, and requested the said William to pay to him the said James the said principal sum of two hundred and ninety pounds, and the interest aforesaid, at the expiration of that time, according to the tenor of the condition of the said writing-obligatory; and thereupon afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, in consideration that the said James, at the special instance and request of the said William, would forbear and give to the said William some further time for the payment of the said principal sum of two hundred and ninety pounds after the expiration of the time in and by the said condition limited for payment thereof, he the said William undertook, and then and there faithfully promised the said James to pay him the said principal sum of money as soon as he conveniently could after the expiration of the time limited in the said condition, and in the mean time that he the said William would pay the said James interest for the said principal sum of two hundred and ninety pounds from the expiration of the said time in the said condition limited for that purpose, until the said principal sum should be paid, at and after the rate of five pounds by the one hundred pounds by the year, and so in proportion for a lesser sum than one hundred pounds, that is to say, when he the said William should be there-to afterwards requested: And the said James in fact saith, that he, confiding in the said promise and undertaking of the said William so by him made in this behalf as aforesaid, did, to wit, at the request of the said William, forbear and give unto him further time for the payment of the said principal sum of two hundred and ninety pounds from the expiration of the time limited by the said condition for payment thereof, for a long time, to wit, until a day long afterwards, that is to say, until the first day of April A. D. 1775, to wit, at L. aforesaid, in, &c. aforesaid: And the said James in fact further saith, that afterwards, that is to say, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, there became due and owing from the said William to the said James for interest on the said principal sum of money, at and after the rate of five pounds by the one hundred pounds by the year, and so in proportion for a less sum than one hundred pounds, according to the tenor of the said promise and undertaking of the said William, a large sum of money, to wit, the sum of fifty pounds, which the said William ought to have paid to the said James, according to the tenor of his said promise; whereof the said William afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, had notice. And whereas the said

and there faithfully promised the said plaintiffs, that she the said M. would immediately pay the interest then due upon the said writing-obligatory to the said plaintiffs; and would also pay them the principal money due upon the said writing-obligatory within a reasonable time afterwards: And the said plaintiffs in fact say, that they, confiding in the said promise and undertaking of the said M. whilst she was sole, in form aforesaid made, have always, from the time of the making of the said promise and undertaking, hitherto abstained and forbore, and still do abstain and forbear, to put the said writing-obligatory in suit against the said Mary. And the said plaintiffs in fact further say, that the interest aforesaid, then due upon the said writing-obligatory at the time of the making of the said promise and undertaking, amounted to thirty-four pounds; whereof the said M. then and there had notice: Yet the said M. whilst she was sole, and the said F. and M. after the marriage celebrated between them, not regarding, &c. but contriving, &c. to deceive and defraud the said plaintiffs in this behalf, have not paid, nor hath either of them as yet paid, the said principal money, and interest due therefore upon the said writing-obligatory, amounting in the whole to, &c. (although to do this the said M. often afterwards whilst she was sole, and the said F. and M. after the marriage celebrated between them, to wit, on, &c. by the said plaintiffs were requested); but they to pay the same have hitherto wholly refused, and still refuse, &c.

Declaration in consideration of plaintiff's giving further time for the payment of the principal of a bond, defendant promised to pay increase of interest.

LONDON, to wit. James Barber complains of William Brander, being in the custody, &c. of a plea of trespass on the case, &c.: for that whereas the said William, before the making of the promise and undertaking of him the said William hereafter next mentioned, to wit, on the fourth day of May in the year of Our Lord 1767, at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, made his certain writing-obligatory, sealed with the seal of the said defendant, the date whereof is the day and year aforesaid, and thereby became held and firmly bound to the said plaintiff in the sum of five hundred and eighty pounds of good and lawful money of Great Britain, to be paid to the said plaintiff when he the said defendant should be thereto afterwards requested, with a condition thereunder-written, that if the said William Brander, his heirs, executors, or administrators, should and did well and truly pay, or cause to be paid, unto the said plaintiff, his executors, administrators, or assigns, the full sum of two hundred and ninety pounds of good and lawful money of Great Britain, within three years then next ensuing from the first day of February then last past, together with interest for the same, at the rate of two pounds ten shillings per cent. per ann. commencing the first day of February aforesaid, then that obligation to be void, otherwise to remain in full force and virtue. And whereas, before the making of the promise and undertaking of the said William hereafter next mentioned, and before the expiration of the said three years in the said condition of the said writing-obligatory mentioned,

mentioned, that is to say, on the first day of July A. D. 1769, at L. aforesaid, in the parish and ward aforesaid, the principal sum of two hundred and ninety pounds in the condition of the said writing-obligatory mentioned then being unpaid, he the said James gave notice to the said William to pay the principal sum, and the interest thereof, at the expiration of the time limited and appointed in and by the condition aforesaid, according to the tenor thereof, and requested the said William to pay to him the said James the said principal sum of two hundred and ninety pounds, and the interest aforesaid, at the expiration of that time, according to the tenor of the condition of the said writing-obligatory; and thereupon afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, in consideration that the said James, at the special instance and request of the said William, would forbear and give to the said William some further time for the payment of the said principal sum of two hundred and ninety pounds after the expiration of the time in and by the said condition limited for payment thereof, he the said William undertook, and then and there faithfully promised the said James to pay him the said principal sum of money as soon as he conveniently could after the expiration of the time limited in the said condition, and in the mean time that he the said William would pay the said James interest for the said principal sum of two hundred and ninety pounds from the expiration of the said time in the said condition limited for that purpose, until the said principal sum should be paid, at and after the rate of five pounds by the one hundred pounds by the year, and so in proportion for a lesser sum than one hundred pounds, that is to say, when he the said William should be thereto afterwards requested: And the said James in fact saith, that he, confiding in the said promise and undertaking of the said William so by him made in this behalf as aforesaid, did, to wit, at the request of the said William, forbear and give unto him further time for the payment of the said principal sum of two hundred and ninety pounds from the expiration of the time limited by the said condition for payment thereof, for a long time, to wit, until a day long afterwards, that is to say, until the first day of April A. D. 1775, to wit, at L. aforesaid, in, &c. aforesaid: And the said James in fact further saith, that afterwards, that is to say, on the same day and year last aforesaid, at L. aforesaid, in, &c. aforesaid, there became due and owing from the said William to the said James for interest on the said principal sum of money, at and after the rate of five pounds by the one hundred pounds by the year, and so in proportion for a less sum than one hundred pounds, according to the tenor of the said promise and undertaking of the said William, a large sum of money, to wit, the sum of fifty pounds, which the said William ought to have paid to the said James, according to the tenor of his said promise; whereof the said William afterwards, to wit, on the same day and year last aforesaid, at, &c. aforesaid, had notice. And whereas the said

By an attorney against defendant a gaoler (who having suffered a prisoner to escape who was in his custody under an attachment for non-performance of an award made by order of *nisi prius*, in a cause between the client of plaintiff and said prisoner, and for which escape plaintiff's client had brought an action against the sheriff, which was at issue), on a promise, that if plaintiff would cause proceedings to be stayed in said action between his client and sheriff, that he defendant would pay plaintiff the costs as well in the former action as the present.

GLAMORGANSHIRE, to wit. David Prichard, one, &c. complains of Edward Thomas, being, &c.: for that whereas, long before the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. one Thomas Mansel Talbot, esquire, was sheriff of the said county of G. and the said E. T. was then and there the gaoler and keeper of a certain gaol of the said T. M. Talbot, so being sheriff of the said county, situate and being within the bailiwick of the said sheriff, at, &c. lawfully and in due manner constituted and appointed by the said T. M. T. as such sheriff as aforesaid: And whereas, long before the time of making the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. one Roger Williams was a prisoner in the said gaol whereof the said E. Thomas was keeper and gaoler as aforesaid, in the custody of the said T. M. Talbot, esquire, so being sheriff as aforesaid there, under and by virtue of a certain writ of attachment, before that time issued and prosecuted out of the court of our said lord the king, before the king himself, the said court then and still being at Westminster in the county of Middlesex, at the instance of one H. E. for certain trespasses and contempts brought against him the said R. W. in the court of our said lord the king, before the king himself; and more especially, amongst the said trespasses and contempts, for the non-performance of a certain award and final arbitrament before that time in due manner made by one Richard Cox, esquire, barrister at law, in a certain action of ejectment theretofore depending and at issue, wherein one John Meredith, as lessee of the said H. E. was plaintiff, and the said R. W. was defendant, to which said R. C. the matters in dispute between the said parties in the said action of ejectment had been referred for his final determination and award, and with the consent of the said parties respectively, and under and by virtue of a certain order of *nisi prius*, afterwards made a rule of the said court of our said lord the king, before the king himself; in which said award it was and had been, amongst other things, awarded by the said Richard Cox, the said referee and arbitrator, that the said R. W. should pay to the said H. E. or to the said D. P. as being the attorney and solicitor of and for the said H. E. in the said action of ejectment, the costs in the said action: And the said D. Prichard, the said attorney or solicitor of and for the said H. E. in the said action of ejectment, further says, that the costs in the said action, so awarded to be paid by the said R. C. amounted and were taxed at a large sum of money, that is to say, the sum of fifty-six pounds five shillings of lawful, &c.; and that the said R. W. was a prisoner in the said gaol whereof the said Edward Thomas was keeper and gaoler as aforesaid, in the custody of the said T. M. T. so being sheriff as aforesaid, under and by virtue of the said writ of attachment, as well by reason of the non-payment of fifty-six pounds five shillings, the amount of the said costs, as for other the trespasses and contempts brought against him the said R. W. more especially by reason and on account of the non-performance of the said order, that is to say, at, &c. And where-

as also afterwards, and before the time of making the said promise and undertaking next hereinafter mentioned, whilst the said T. M. T. esquire, was and continued such sheriff as aforesaid, and whilst the said R. W. was a prisoner in the said gaol whereof the said E. T. was keeper and gaoler, in the custody of the said T. M. T. esquire, so being sheriff as aforesaid, afterwards, to wit, on the day of A. D. at, &c. he the said R. W. so then and still being such prisoner as aforesaid in the said gaol whereof the said E. T. was keeper and gaoler as aforesaid, in the custody of him the said T. M. T. esquire, so being such sheriff as aforesaid, for the cause aforesaid, by and through the mere negligence and carelessness of the said T. M. T. esquire, the said sheriff of the said county of G. and of the said E. T. the gaoler and keeper of the said gaol, escaped from and out of the said gaol and custody of the said T. M. T. esquire, so being sheriff as aforesaid, and went at large wherever it pleased him the said R. W. to go, without the leave or consent and against the will of the said H. E.; and the said T. M. T. esquire, the said sheriff, having no legal warrant or authority whatsoever for the said R. W. being so let a-going at large; and the said H. E. not being then, or at any time either before or since, satisfied by the said R. W. for his non-performance of the several matters so awarded to have been theretofore performed by him the said R. W. to the said H. E. nor the said D. P. the said attorney and solicitor of the said H. E. being then or there paid or satisfied the said fifty-six pounds five shillings, of the amount of the costs so awarded to be paid to them, or either of them, by the said R. W. as aforesaid. And whereas also the said H. E. by reason of the premises aforesaid, and of the negligence, carelessness, and misconduct of the said T. M. T. as aforesaid, whilst he was so sheriff as aforesaid, and of the said E. T. whilst he was such gaoler as aforesaid, in having permitted and suffered the said R. W. to escape and go at large as aforesaid, afterwards, and before the making of the said promise and undertaking next hereinafter mentioned by the said E. T. to wit, in Michaelmas term in the twenty-fourth year of the reign of our said lord the now king, impleaded the said T. M. T. esquire, in the said court of our said lord the king, before the king himself, the said court being then and still held at Westminster in the said county of Middlesex, in a certain plea and trespass on the case, to his the said Herbert Evans's damage of five hundred pounds, for the obtaining and recovering his damages by him the said H. E. sustained by reason and on account of the escape of the said R. W. out of the custody of the said T. M. T. esquire, so being sheriff as aforesaid, and of his the said R. W.'s non-performance of the said award, and of the several matters so awarded to have been performed by him the said R. W. to the said H. E. as aforesaid; upon which said plea in the said court of our lord the king, before the king himself, at Westminster aforesaid, such proceedings were had in the same court that issue was joined between the said H. E. and the said T. M. T. to be tried by a jury of the said county of Hereford, being the next English county to the said county of Glamorgan. And whereas also the said D. P.

before

Action on the
case for the
escape brought
against the sher-
riff.

before and at the time of the making of the promise and undertaking next hereinafter mentioned, was retained and employed by the said H. E. as his attorney and solicitor in and about the prosecuting and carrying on of the said suit last above mentioned of him the said H. E. against the said T. M. T. for and by reason of the said escape of the said R. W. as last aforesaid, to wit, at, &c.; and the said last-mentioned suit being so depending as aforesaid, and the said fifty-six pounds five shillings, the said costs so awarded to be paid to the said H. E. by the said R. W. being wholly unpaid either to the said H. E. or to the said D. P. the said attorney and solicitor of and for the said H. E. in the said former action of ejectment; and the said D. P. being such attorney and solicitor of and for the said H. E. in the said suit so brought against the said T. M. T. for and by reason of the said escape of the said R. W. and the said E. T. having been such gaoler and keeper of the said gaol at the time of the said escape of the said R. W. in manner before mentioned, afterwards, whilst the said last-mentioned suit was depending, and before the time of the said issue therein joined between the said H. E. and the said T. M. T. to wit, on, &c. at, &c. he the said H. E. in consideration that the said D. P. at the special instance and request of the said E. T. would cause the trial of the aforesaid issue so joined between the said H. E. and the said T. M. T. in the plea last aforesaid, to be stayed, and would not any further prosecute the said last-mentioned suit, but would cause the said H. E. to desist from all further prosecution of the said plea of trespass on the case against the said T. M. T. for or by reason of the said escape of the said R. W. as aforesaid, undertook, and to the said D. P. then and there faithfully promised, that he the said E. T. would pay the said D. P. as well the said sum of fifty-six pounds five shillings, the amount of the costs so awarded to be paid by the said R. W. to the said H. E. or to the said D. P. as attorney and solicitor of and for the said H. E. as aforesaid, and also all such costs and charges as had been and were then incurred in and about the prosecuting the said last-mentioned suit of the said H. E. against the said T. M. T. for or by reason of the said escape of the said R. W. as last aforesaid, whenever such costs in the said last-mentioned action should be taxed: And the said D. P. in fact says, that he, confiding in the said promise and undertaking of the said E. T. in form aforesaid made, did cause the trial of the aforesaid issue, so joined between the said Herbert Evans and the said T. M. T. in the plea last aforesaid to be stayed, and cause the said H. E. to desist from all further prosecution thereof against the said T. M. T. and hath not further prosecuted the same; and since the making of the said promise and undertaking of the said E. T. the said last-mentioned suit of the said H. E. against the said T. M. T. for the cause last aforesaid, hath not been further prosecuted, but at the special instance and request of the said E. T. the said H. E. and D. P. his said attorney and solicitor, have forbore, and yet do forbear, to prosecute the same any further against the said T. M. T. and all process thereupon against the said

Issue joined; and in consideration plaintiff would cause the trial of the issue to be stayed, &c. defendant undertook, &c.

said T. M. T. is crased, to wit, at, &c. : And the said D. P. in fact further says, that the costs which had been and were incurred in and about prosecuting of the said last-mentioned suit of the said H. E. against the said T. M. T. afterwards, to wit, on, &c. amounted to and were taxed by the proper officer in that behalf to a large sum of money, to wit, the sum of pounds of lawful, &c. to wit, &c. : Yet the said Edward Thomas, not regarding his said promise and undertaking by him so made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said D. P. in this behalf, hath not yet paid to the said D. P. either the said sum of fifty-six pounds five shillings so awarded to be paid as aforesaid, or the other sum of pounds, the said amount of the said costs so taxed as aforesaid, which had been and were incurred in and about the prosecuting of the said last-mentioned suit of the said H. E. against the said T. M. T. as aforesaid, or either of them, or any part thereof (although to pay the same several sums of money to the said D. P. he the said E. T. hath by the said D. P. been often since requested) ; but to pay either the said sum of fifty-six pounds five shillings, or the said sum of or either of them, or any part thereof, to the said D. P. hath hitherto wholly refused, to wit, at, &c. (Counts for money paid, laid out, and expended ; ditto had and received ; common breach to two last.)

LONDON, ff. Mary Saunders, executrix of the last will and testament of Thomas Saunders deceased, complains of Richard Aucklam, being in the custody, &c. : for that whereas the said defendant, in the lifetime of the said Thomas, to wit, on the third of March A. D. 1736, at L. &c. by a certain indenture then and there made by the said defendant to the said T. and sealed with the seal of the said defendant, did put himself apprentice to the said T. in his lifetime, to learn the art of waterman, and with him, after the manner of an apprentice, to dwell and serve upon the river Thames, from the said third day of March in the year aforesaid unto the full end and term of seven years from thence next following, to be fully complete and ended ; during which term the said apprentice his said master faithfully should serve as aforesaid, his secrets keep, and his lawful commands every where gladly do : And whereas the said defendant afterwards, and during the lifetime of the said Thomas, and during the continuance of the said term, that is to say, on the tenth of February A. D. 1742, did, without the licence or consent of the said T. and against his will, and contrary to the said covenant so made as aforesaid, desert and quit, and absent himself from the service of the said F. for a long time, that is to say, for all the then residue of the said term of years, whereby the said T. was deprived of the benefit and advantage of the service of his said apprentice, which he ought and might have had during that time, and thereby lost divers large sums of money. And whereas the said defendant afterwards,

Declaration against defendant, an apprentice, by his master for money promised, if he would not take advantage of breach of covenant in defendant's leaving his service formerly, and would endeavour to procure him to be made free of a company.

afterwards, in the lifetime of the said Thomas, that is to say, on the twenty-eighth day of September A. D. 1750, at L. &c. in consideration that the said T. at the special instance and request of the said defendant, had then and there undertaken and faithfully promised the said defendant, that if he the said T. would not take any advantage of the said breach of covenant of the said defendant in the said indenture contained, by bringing an action or actions at law against the said defendant for the same, but would deliver up the said indenture, sealed with the seal of the said defendant as aforesaid, to the use of the said defendant; and would also, as much as in him lay, endeavour to procure the said defendant to be made free of the Watermen's Company at L. aforesaid, undertook, and then and there faithfully promised the said Thomas in his lifetime, to pay him the sum of fifteen pounds of lawful money, whenever afterwards he the said defendant should be thereto required: And the said plaintiff in fact saith, that the said T. in his lifetime, confiding in the said promise and undertaking of the said defendant so made as aforesaid, did not take any advantage of the said breach of covenant of the said defendant in absenting himself from the service of the said T. as aforesaid, nor of any other breach of the said covenant of the said defendant in the said indenture contained, by bringing any action or actions at law for the same, nor in any other manner; and the said T. afterwards, that is to say, on the same day and year last-mentioned, at L. &c. did deliver up the said indenture, sealed with the seal of the said defendant as aforesaid, to the use of the said defendant, and did, as much as in him lay, endeavour to procure the said defendant to be made free of the Watermen's Company at L. &c. aforesaid; and the said defendant was made free of the Watermen's Company afterwards, that is to say, on the same day and year last-mentioned, at L. &c.; and of which said promises the said defendant afterwards, that is to say, on the same day and year last-mentioned, there had notice: Nevertheless, &c. (Conclusion for the fifteen pounds: Money laid out, and any other common Counts, as in case of goods sold, &c. if there were any; for any Counts in promises may be laid if necessary.)

Declaration in special *assumpsit* against the agent of the purchaser of an estate who attended him to pay for it, and the purchaser paid part in Mosney post bills, which plaintiff accepted, on defendant's promise, that if they were not duly paid he would make them cash. Breach, that they were dishonoured, but defendant refused to take them up. 2d Count states, that defendant gave the bills in part payment to plaintiff.

LANCASHIRE, to wit. John Marsden, esquire, complains of John Hartley, gent. one of the attornies of the court of our lord the now king, before the king himself, present here in court in his own person, in a plea of trespass on the case: for that whereas, before and at the time of making the promise and undertaking of the said John Hartley hereafter next mentioned, one John Kayley was about to pay to the said John Marsden a certain large sum of money, the price of a certain estate theretofore bought by the said John Kayley of the said John Marsden; and the said John Kayley upon that occasion was attended by the said John Marsden, that if they were not duly paid he would make them cash. Breach, that they were dishonoured, but defendant refused to take them up. 2d Count states, that defendant gave the bills in part payment to plaintiff.

Hartley

Hartley as his agent and adviser in that business: and thereupon heretofore, to wit, on the twenty-sixth day of April in the year of Our Lord 1788, to wit, at Lancaster in the county of Lancaster, in consideration that he the said John Marsden, at the special instance and request of him the said John Hartley, would accept and take, and endeavour to procure payment of, and when paid would accept the value thereof in part payment, and on account of the said purchase-money, from the said John Kayley, two notes in writing, commonly called Mosney post-bills, bearing date respectively the twenty-sixth day of July and sixth day of December in the year of Our Lord 1787, made and signed respectively by one William Hall; by each of which said bills he the said William Hall promised to pay that his Sola bill of exchange to one Edmond Pilkington, in the said bill mentioned by the name of Mr. Edmond Pilkington, or bearer, five guineas sterling, twenty-one days sight, No. 16, Cheapside, London, value received, for certain persons in the said several bills called Livesey, Hargreave, Anstie, Smith, and Hall, he the said John Hartley undertook, and then and there faithfully promised, that if the said bills, or either of them, should not be paid when the same should respectively become due and payable, according to the tenor and effect thereof respectively, he the said John Hartley would pay to the said John Marsden the value expressed in such of the said bills as should not be duly paid, whenever afterwards he the said John Hartley should be thereto requested: And the said John Marsden in fact says, that he, confiding in the said promise and undertaking of the said John Hartley, afterwards, to wit, on the day and year first above mentioned, at Lancaster aforesaid, in the county aforesaid, at the special instance and request of the said John Hartley, did accept and take the said bills on the terms and conditions, and on the account aforesaid; and that afterwards, and within a reasonable time after the said receipt thereof, to wit, on the second day of May in the year of Our Lord 1788 aforesaid, he the said John Marsden caused the said bills, and each of them, to be duly seen at No. 16, Cheapside, London, according to the tenor and effect thereof, and that the said several bills were thereupon accepted to be paid, according to the tenor and effect thereof, to wit, at Lancaster aforesaid, in the county aforesaid: And the said John Marsden in fact further saith, that afterwards, and at the end and expiration of the time when the said bills became payable, according to the tenor and effect thereof respectively, to wit, on the twenty-fourth day of May in the year last aforesaid, the said several bills were duly shewn and presented at No. 16, Cheapside, London, for payment thereof, according to the tenor and effect thereof, and of such sight and acceptance thereof respectively as aforesaid, to wit, at Lancaster aforesaid, in the county aforesaid, but that payment of the said several bills was then and there refused; of all which said premises the said John Hartley afterwards, to wit, on the day and year last aforesaid, there had due notice; and by reason thereof, and according to his said promise and under-

ad Count, that
defendant him-
self gave the bills
in part payment
to plaintiff.

taking, became liable to pay to the said John Marsden the value expressed in each of the said several bills, amounting in the whole to a large sum of money, to wit, the sum of ten pounds ten shillings of like lawful money, when he the said John Hartley should be thereto requested. *And whereas* heretofore, to wit, on the said twenty-sixth day of April, in the year of Our Lord 1788, at Lancaster aforesaid, in the county aforesaid, in consideration that the said John Marsden, at the like special instance and request of the said John Hartley (who was then and there retained and employed as the agent, and on the behalf of the said John Kayley, to pay to the said John Marsden divers large sums of money, on account of the purchase of a certain other estate of the said John Marsden by the said John Kayley), would accommodate him the said John Hartley by receiving and taking from him, and endeavour to procure payment of, and when paid would accept the value in part payment, and on account of the said several sums of money which he the said John Hartley was so retained and employed to pay as aforesaid, two notes in writing, commonly called *Mosney* post-bills, bearing date respectively the twenty-sixth day of July and sixth day of September in the year of Our Lord 1787, made and signed respectively by one William Hall; by each of which said bills, he the said William Hall promised to pay that his *Sola* bill of exchange to one Edmond Pilkington, in the said bill mentioned by the name of Mr. Edmond Pilkington, or bearer, five guineas sterling, twenty-one days sight, at No. 16, Cheapside, London, value received, for certain persons in the said several bills called *Livasey, Hargreave, Antie, Smith, and Hall*, he the said John Hartley undertook, and then and there, to wit, at Lancaster aforesaid, in the county aforesaid, faithfully promised the said John Marsden, that if the said bills, or either of them, should not be paid when the same should respectively become due and payable, according to the tenor and effect thereof respectively, he the said John Hartley would pay to the said John Marsden the value expressed in such of the said bills as should not be duly paid, whenever afterwards he the said John Hartley should be thereto requested: And the said John Marsden in fact says, that he, confiding in the said promise and undertaking of the said John Hartley, afterwards, to wit, on the day and year first above mentioned, at Lancaster aforesaid, in the county aforesaid, at the special instance and request of the said John Hartley, did accommodate the said John Hartley in manner aforesaid, and did receive and take the said bills on the terms and conditions aforesaid; and that afterwards, and within a reasonable time after such receipt thereof, to wit, on the second day of May in the year of Our Lord 1788 aforesaid, he the said John Marsden caused the said bills, and each of them, to be duly seen at No. 16, Cheapside, London, according to the tenor and effect thereof; and that the said several bills were then and there accepted to be paid, according to the tenor and effect thereof, to wit, at Lancaster aforesaid, in the county aforesaid: And the said John Marsden in fact further saith, that after-

afterwards, and at the end and expiration of the time when the said bills became payable, according to the tenor and effect thereof respectively, to wit, on the twenty-fourth day of May in the year last aforesaid, the said several bills were duly shewn and presented at No. 16, Cheapside, London, for payment thereof, according to the tenor and effect thereof, and of such sight and acceptance thereof respectively as aforesaid, but that payment of the said several bills was then and there refused, to wit, at Lancaster aforesaid in the county aforesaid; of all which said premises the said John Hartley afterwards, to wit, on the day and year last aforesaid, there had due notice; and by reason thereof, and according to his said promise and undertaking, he the said John Hartley became liable to pay to the said John Marsden the value expressed in each of the said several bills, amounting in the whole to a large sum of money, to wit, the sum of ten pounds ten shillings of like lawful money, when he the said John Hartley should be thereto afterwards requested. And whereas heretofore, before the making of the promise and undertaking of the said John Hartley hereafter next mentioned, the said John Marsden, at the like special instance and request of the said John Hartley, and to accommodate *him only*, as the agent on the behalf of the said John Kayley, to pay on his account to the said John Marsden divers large sums of money for certain other lands, tenements, and hereditaments before that time purchased by the said John Kayley of the said John Marsden, had received and taken two other notes in writing, commonly called Mosney post-bills, dated respectively the twenty-sixth day of July and the sixth day of September in the said year 1787, made and signed respectively by one William Hall, for each of which said bills he the said William Hall promised to pay to one Edmund Pilkington, in the said last bills respectively mentioned by the name and description of Mr. Edmund Pilkington, or bearer, five guineas sterling, twenty-one days sight, at No 16, Cheapside, London, value received, for certain persons in the said several bills called Livesey, Hargreave, Anstie, Smith, and Hall; and he the said John Marsden had so received and taken the said bills at the said instance and request of the said John Hartley, being such agent as aforesaid, under a mere engagement to use due diligence to receive the money due upon the same, according to the tenor and effect thereof; and, if the same should be duly paid, to accept the amount, when received, in full satisfaction and discharge of so much money on account of the said purchase; on condition nevertheless, that if the same bills, or either of them, should not be so paid to the said John Marsden when the same respectively became due and payable, according to the tenor and effect thereof, that then he the said John Hartley would take them up again and pay to the said John Marsden the money therein contained, whenever he the said John Hartley should be thereto afterwards requested: And the said John Marsden in fact further says, that after the receipt of the said last-mentioned bills, under the circumstances aforesaid, he the said John Marsden had

3d Count, that when they were returned dishonoured to defendant, he promised to pay him principal and interest till paid, in consideration of forbearance.

accordingly caused the said several bills, and each of them, to be duly shewn and presented for sight, and acceptance, and payment, according to the tenor and effect thereof respectively; and that payment thereof, and of each of them, according to the tenor and effect thereof, had been refused, and due notice of the said last-mentioned premises had been given to the said John Hartley, and immediate payment of the said several bills required of him, according to his said promise and undertaking, to wit, at Lancaster aforesaid, in the county aforesaid; in consideration of which said several premises, and also in consideration that he the said John Marsden would not insist upon immediate payment of the amount of the said several sums of money in the said several bills contained, but would forbear to sue him the said John Hartley, and give day of payment for the same for a reasonable time further, he the said John Hartley afterwards, to wit, on the twenty-sixth day of May in the year of Our Lord 1788, to wit, at Lancaster aforesaid, in the county aforesaid, undertook, and then and there faithfully promised the said John Marsden, that he the said John Hartley would pay to the said John Marsden the amount of the said several sums of money in the said bills contained, with lawful interest for the same, for the time that the same were so refused payment, according to the tenor and effect thereof respectively, till the same should be paid by the said John Hartley: And the said John Marsden in fact says, that he, confiding in the said last-mentioned promise and undertaking of the said John Hartley, so by him made as aforesaid, afterwards, to wit, on the day and year last aforesaid, at Lancaster aforesaid in the county aforesaid, did forbear to sue him the said John Hartley, and did give day of payment for the said several sums of money in the said bills contained for a reasonable time, to wit, from thenceforth to the time of the commencement of this suit, and that a large sum of money, to wit, the sum of twelve pounds of like lawful money, hath become due and payable from the said John Hartley to the said John Marsden for principal and interest upon the said several sums of money in the said bills contained; of which the said John Hartley hath had due notice, to wit, at Lancaster aforesaid, in the county aforesaid. (Add Counts for money had and received; money laid out, &c.; account stated; and common conclusion.)

T. BARROW.

• See Considerations not Classed for the two first Counts of this declaration.

Declaration in *assumpsit*, in consideration that plaintiff would forbear to sue defendant (for a legacy left to his wife) for a fortnight, defendant undertook to pay, &c.

LONDON, *ff.* Benjamin Taylor, late of Goldhanger, in the county of Essex, innholder, was attached to answer Thomas Sessions in a plea of trespass on the case, &c.; and thereupon the said plaintiff, by Richard Bland his attorney, complains: for that whereas, before the making of the two several promises and undertakings of the said defendant hereinafter next mentioned, to wit, on the nineteenth of March 1784, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, one Timothy Laud, who is since dead, duly made and published his last will and

testament in writing, bearing date the day and year aforesaid, and thereby (amongst other things) gave and bequeathed unto Susanah, the then and now wife of the said plaintiff, the sum of one hundred pounds, to be paid to her within twelve calendar months next after the decease of him the said Timothy Laud, by his executrix thereinafter named; and the said Timothy Laud by his said will nominated, constituted, and appointed one Martha, who was then the wife of him the said T. L. and is now the wife of the said defendant, sole executrix thereof; and afterwards, to wit, on the twentieth day of October 1787, died without altering or revoking his said will, to wit, at L. aforesaid, in the parish and ward aforesaid: And whereas the said Martha, after the death of the said T. L. and before her intermarriage with the said defendant, and also before the making of his said two several promises and undertakings, to wit, on the twentieth day of October aforesaid, had taken upon herself the execution of the said will, and had duly assented to the said bequest, and possessed herself of divers goods and moveables which were of the said Timothy L. at the time of his death, to wit, at L. aforesaid, in the parish and ward aforesaid: And whereas the said defendant afterwards, and before the expiration of twelve calendar months from the time of the decease of the said T. L. and also before the making of his said two several promises and undertakings, to wit, on the thirtieth of September 1788, at L. aforesaid, in the parish and ward aforesaid, had intermeddled with the said money, and the said legacy, at the respective times of the making his said two several promises and undertakings, was *due* and wholly unpaid; whereof the said defendant, before the making thereof, at L. aforesaid, in the parish and ward aforesaid, had notice; And whereas the said goods and chattels of the said T. L. so possessed by the said Martha before her intermarriage with the said defendant as aforesaid, were more than sufficient to pay and satisfy all the debts and funeral charges of the said T. L. and also the said legacy of one hundred pounds hereinbefore mentioned; and thereupon the said defendant heretofore, to wit, on the twenty-fifth of October in the year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration of the premises, and also in consideration that the said plaintiff, at the special instance and request of the said defendant, would forbear and give further time for a fortnight longer (that is to say, until the eighth of November then next ensuing) for the payment of the said legacy, undertook and faithfully promised the said plaintiff, that he the said defendant would pay him the said legacy on the said eighth of November then next ensuing and now last past; And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, did accordingly forbear and give further time for the payment of the said legacy from the time of the making the said promise and undertaking until and after the said eighth of November, to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas also the said defendant, after the

ad Count, in consideration that plaintiff would forbear till Christmas day a further time.

death of the said T. L. and also after his intermarriage with the said Martha as aforesaid, and before the making of his promise and undertaking hereinafter next mentioned, at L. aforesaid, in the parish and ward aforesaid, had possessed himself of divers other goods and chattels which were of the said T. L. at the time of his death to a large amount, that is to say, to an amount which, together with that of the goods and chattels of the said T. L. so possessed by the said Martha before the said intermarriage as aforesaid, was sufficient to pay and satisfy all the debts and funeral charges of the said T. L. and also the said legacy of one hundred pounds hereinbefore mentioned; and thereupon the said defendant afterwards, to wit, on the second of December in the year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration of the several premises aforesaid, and also in consideration that the said plaintiff, at the like instance and request of the said defendant, would forbear and give further time until Christmas-day (that is to say, until the twenty-fifth of December then next ensuing) for payment of the said legacy, undertook and faithfully promised the said plaintiff, that he the said defendant would pay him the said legacy on the said twenty-fifth of December then next ensuing and now last past: And the said plaintiff avers, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did accordingly forbear and give further time of payment for the said legacy, from the time of the making of the said last-mentioned promise and undertaking until and after the said twenty-fifth of December, to wit, at London aforesaid, in the parish and ward aforesaid. And whereas the said defendant afterwards, to wit, on the seventeenth of January in the year 1789, at L. aforesaid, in the parish and ward aforesaid, was indebted to the said plaintiff in the sum of two hundred pounds for money by the said defendant before that time had and received for the use of the said plaintiff; and being so indebted, he the said defendant, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said plaintiff, to pay him the said sum of money last-mentioned, when he the said defendant should be thereto afterwards requested. (Add another Count upon an *insimul computassit*.): Yet he the said defendant, not regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not paid the said legacy or other sum of money hereinbefore mentioned, or any part thereof, to the said plaintiff (although the said defendant, after the making of his said several promises and undertakings, and also after the times in his said two first-mentioned promises and undertakings respectively for the payment of the said legacy, to wit, on the day and year last aforesaid, and often since, at L. aforesaid, in the parish and ward aforesaid, was requested by the said plaintiff so to do); but he to do this hath hitherto wholly refused, and still

still refuses: wherefore the said plaintiff says, that he is injured, and hath sustained damage to the amount of two hundred pounds; and therefore he brings suit, &c.

J. MARRYAT.

MIDDLESEX, *ff.* Robert Wheelhouse v. John Lingard and Joseph Hall Davison: for that whereas, before the making of the several promises and undertakings of the said J. L. and J. H. hereinafter mentioned, interlocutory judgment had been signed in a certain cause then depending in the court of our said lord the king, before the king himself here (the said court then and still being held at Westminster in the county of M. aforesaid), wherein one E. Green was plaintiff and the said W. was defendant, and certain subsequent proceedings were had thereon, to wit, at, &c. aforesaid: And whereas afterwards, and whilst the said cause was depending in the said court, and before the making of the several promises and undertakings of the said J. L. and J. H. hereafter mentioned, to wit, on Thursday next after one month from Easter-day in Easter term, in the twenty-fifth year of the reign of his present majesty, a certain rule had been applied and made in and by the said court of our said lord the king, before the king himself, whereby it was ordered, that the interlocutory judgment signed in the said cause, and the subsequent proceedings had thereon, should be set aside for irregularity; and it was thereby referred to Mr. Benton to tax the said R. W. his costs occasioned by that application, and which costs when taxed it was thereby ordered should be paid by the said Edward Green to the said Robert Wheelhouse or his attorney, as by the said rule (reference being thereunto had) will more fully appear: And the said Robert W. in fact saith, that afterwards, and before the making of the several promises and undertakings of the said J. L. and J. H. hereafter next mentioned, to wit, on, &c. at, &c. the said Mr. Benton, in pursuance of the said rule, did tax and allow the said Robert W. his costs occasioned by the said application, and that the same amounted to a large sum of money, to wit, the sum of seven pounds six shillings and twopence of lawful money of Great Britain, as by the allocatur of the said Mr. Benton in that behalf (reference being thereto had) will more fully appear; but that the said E. Green (although often requested) did not nor would pay the said sum of seven pounds six shillings and twopence, or any part thereof, to the said R. W. but wholly refused and neglected so to do: and thereupon he the said R. W. for obtaining payment of the said sum of seven pounds six shillings and twopence, afterwards, and before the making of the said several promises and undertakings of the said J. L. and J. H. hereafter mentioned, to wit, on Saturday next after the morrow of the Ascension of Our Lord in Easter term, in the twenty-fifth year aforesaid, moved for and obtained another rule of the said court of our said lord the king, before the king himself, whereby it was ordered, that there should issue a writ of attachment against the said E. Green for his contempt in not paying the said sum of

Declaration in assumpsit, in consideration that plaintiff would forbear to issue an attachment pursuant to a rule obtained on the master's allocatur, upon a rule obtained by the defendant in the original cause to shew cause why the interlocutory judgment should not be set aside with costs for irregularity, the defendant's third persons, undertook, &c.

ASSUMPSIT SPECIAL.—TO PAY MONEY,

seven pounds six shillings and twopence pursuant to the said last-mentioned rule, and the said master's allocatur thereon, as by the said rule for an attachment (reference being thereunto had) will more fully appear; whereupon the said R. W. at the time of the making the promise and undertaking of the said J. L. and J. H. hereafter next mentioned, intended and was about to issue a writ of attachment against the said E. Green, in pursuance of the said last-mentioned rule, to wit, at, &c.; of all which said several premises the said J. L. and J. H. there had notice: and thereupon heretofore, to wit, on the second of November in the year, &c. at, &c. in consideration of the premises, and also in consideration that the said R. W. at the special instance and request of the said J. L. and J. H. would forbear to issue a writ of attachment against the said E. Green in pursuance of the said last-mentioned rule, they the said J. L. and J. H. then and there undertook, and faithfully promised the said R. W. to pay him the costs in the master's allocatur (that is to say, the sum of seven pounds six shillings and twopence), and the subsequent costs on the motion or the attachment aforesaid: And the said R. W. avers, that he, confiding in the said promises and undertakings of the said J. L. and J. H. did forbear to issue a writ of attachment against the said E. Green, in pursuance of the said last-mentioned rule, and that the subsequent costs on the motion or the attachment aforesaid, amounted to a large sum of money, to wit, the sum of ten pounds of lawful money, &c. making, together with the sum of seven pounds six shillings and twopence, the sum of seventeen pounds six shillings and twopence of like lawful money; whereof the said J. L. and J. H. afterwards, to wit, on the same day, &c. at, &c. had notice; and by means thereof, and according to the tenor and effect of their said promise and undertaking, they the said J. L. and J. H. became liable to pay to the said R. W. the said sum of seventeen pounds six shillings and twopence, when they the said J. L. and J. H. should be thereto afterwards requested. And whereas, after the obtaining of the said last-mentioned rule, and before the making of the promise and undertaking of the said J. L. and J. H. hereafter mentioned, the said J. L. and J. H. had paid to the said R. W. the sum of five guineas in part of the costs on the master's allocatur and moving for the attachment: and thereupon the said R. W. for obtaining payment of the remainder of the said costs, at the time of making the several promises and undertakings hereafter next mentioned, intended and was about to issue a writ of attachment against the said E. Green, to wit, at, &c.; whereof the said J. L. and J. H. there had notice: and thereupon heretofore, to wit, on the twenty-seventh of May A. D. 1785 aforesaid, &c. at, &c. in consideration of the premises, and also in consideration that the said R. W. at the like special instance and request of the said J. L. and J. H. would forbear to issue a writ of attachment against the said E. Green for the non-payment of the remainder of the said last-mentioned costs, they the said J. L. and J. H. then and there undertook, and faithfully promised the said R. W. to pay him the

ad Count, stating, that defendants had paid five guineas in part payment, and, in consideration of forbearance to issue the attachment for the remainder, under- took, &c.

remainder of the said last-mentioned costs on or before that day se'nnight (that is to say, on or before the third day of June in the year aforesaid): And the said R. W. avers, that he, confiding in the said last-mentioned promise and undertaking of the said J. L. and J. H. did forbear to issue a writ of attachment against E. Green for the non-payment of the remainder of the said last-mentioned costs, and that the same amounted to a large sum of money, to wit, the sum of pounds of lawful money of Great-Britain; whereof the said J. L. and J. H. afterwards, and before the payment of the remainder of the said last-mentioned costs, or any part thereof, to wit, on the day and year, &c. at, &c. had notice; and by means thereof, and according to the tenor and effect of the said last mentioned promise and undertaking, they the said J. L. and J. H. then and there became liable to pay, and ought to have paid, the said last-mentioned sum of twenty pounds to him the said R. W. And whereas afterwards, and before the payment of the remainder of the said last-mentioned costs, or any part thereof, to wit, on the said ^{3d Count, in} third of June A. D. 1785 aforesaid, at, &c. in consideration, ^{consideration,} that the said R. W. at the like special instance and request of the said ^{&c. would pay} J. L. and J. H. would forbear to issue a writ of attachment against the said E. Green for the non-payment of the remainder of the said ^{the remainder} last-mentioned costs, they the said J. L. and J. H. then and there undertook and faithfully promised the said R. W. to pay him the remainder of the said last-mentioned costs the latter end of the week ^{of the costs latter end of the week.} (that is to say, on or before the eighth June in the year last aforesaid): And the said R. W. avers, that he, confiding in the said last-mentioned promise and undertaking of the said J. L. and J. H. did forbear to issue a writ of attachment against the said E. G. for the non-payment of the remainder of the said last-mentioned costs, and that the same amounted to a large sum of money, to wit, the said sum of of like lawful money, &c.; whereof the said J. L. and J. H. afterwards, and before the payment of the remainder of the said last-mentioned costs, or any part thereof, to wit, on the day and year last aforesaid, at, &c. had notice; and by means thereof, according to the tenor and effect of their said last-mentioned promise and undertaking, they the said J. L. and J. H. then and there became liable to pay, and ought to have paid, the said last-mentioned sum of pounds to him the said R. W. (4th Count like the 3d, only varying the dates: money had and received; account stated; and common conclusion to the whole.)
Drawn by MR. TIDD.

LANCASHIRE, to wit. James Lord complains of Edmund Declaration in
 Kershaw and Edmund Butterworth, being in the custody of the ^{special assumpsit}
 marshal of the marshalsea of our lord the now king, before the king ^{against the as-}
 himself, in a plea of trespass on the case, &c.: for that whereas, ^{signees of a tes-}
 before and at the time of the making of the promise and undertaking ^{nant for the be-}
 to pay the landlord his rent of a farm, in consideration of his forbearing to distrain goods on the ^{nefit of credi-}
 premises.

of the said Edmund K. and Edmund B. hereafter next mentioned, one John Brown was the tenant for years, to wit, from year to year, of a certain messuage or dwelling-house and premises, with the appurtenances, of him the said James Lord, situate at the parish of Rochdale in the county of Lancaster, under a certain demise thereof theretofore made to him the said John Brown, at and under a certain yearly rent, to wit, the yearly rent or sum of eighteen pounds of lawful money of Great Britain, whereof, at the time of the assignment, and also of the promise and undertaking of the said Edmund K. and Edmund B. hereafter next mentioned, a large sum, to wit, the sum of eighteen pounds, was due and in arrear from the said John Brown to the said James Lord for the said premises, to wit, at the parish aforesaid in the county aforesaid; and the said John Brown so being such tenant thereof, and the said rent so being due from him to the said James Lord for the said premises, he the said John Brown having assigned over to the said E. K. and E. B. certain household goods and furniture and brewing vessels of him the said John Brown, which at the time of the making the said promise and undertaking were in and upon the said messuage or dwelling-house and premises, and liable to the distress of the said James Lord for the said arrears of rent, he the said James Lord heretofore, to wit, on the eighteenth day of September in the year of Our Lord 1789, at the parish aforesaid in the county aforesaid, entered upon the said demised premises to distrain the said goods so there being for the said rent so being in arrear for the same as aforesaid; of all which said premises the said E. K. and E. B. then and there had notice: and thereupon, in consideration that the said James Lord, at the special instance and request of the said E. K. and E. B. would desist from distraining the said goods, for or on account of the said arrears of rent so due to him as aforesaid, they the said E. K. and E. B. undertook, and then and there faithfully promised the said J. L. to pay to him all the said arrears of rent so due and owing to him for and in respect of the said demised premises as aforesaid, when the said E. K. and E. B. should be thereto afterwards requested; And the said James Lord in fact says, that although he, confiding in the said promise and undertaking of the said E. K. and E. B. so by them made as aforesaid, did then and there forbear and desist from distraining the said goods on the occasion aforesaid, to wit, at the parish aforesaid in the county aforesaid; and although they the said E. K. and E. B. have since paid to the said James L. a part, to wit, the sum of nine pounds on account of the said arrears of rent: Yet the said E. K. and E. B. not regarding their said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said James Lord in this behalf, have not yet paid the residue of the said arrear of rent, or any part thereof, to the said James Lord (although often since requested so to do): but they so to do have, and each of them hath, hitherto wholly refused, and still do respectively refuse, and the same, amounting to a large sum of money, to wit, the sum of nine pounds of like lawful money, is

Still wholly unpaid to the said James Lord, to wit, at the parish aforesaid in the county aforesaid. And whereas, at the time of the making of the promise and undertaking of the said E. K. and E. B. hereafter next mentioned, the said J. Brown was tenant, that is to say, from year to year, to the said J. Lord of a certain other messuage, with the appurtenances situate in the parish aforesaid, under and by virtue of a certain demise thereof theretofore made to him at a certain yearly rent, to wit, the yearly rent of eighteen pounds, therefore payable to the said James Lord; of which said rent a large arrear, to wit, the sum of eighteen pounds, was then and there due to the said J. L.; and the said rent being so due as aforesaid, he the said J. L. for the recovery of his said rent, afterwards, to wit, on the day and year aforesaid, at the parish aforesaid in the county aforesaid, intended to distrain, and was then and there about to distrain, certain goods and chattels then being in and upon the said demised premises, liable to the distress of the said James Lord for the said arrears of rent; whereupon the said E. K. and E. B. (having notice of the premises, and claiming to be entitled to the said goods and chattels by assignment thereof to them by the said John Brown), in consideration of the premises, and also in consideration that the said James Lord, at the special instance and request of the said E. K. and the said E. B. would forbear to distrain the said goods and chattels so being in and upon the said demised premises for the said arrears of rent, they the said E. K. and E. B. undertook, and then and there faithfully promised the said James Lord, to pay to him the said arrear of rent: And the said James Lord avers, that he, confiding in the said last-mentioned promise and undertaking of the said E. K. and E. B. did then and there forbear, and from thence hitherto hath forborne, to distrain the said goods and chattels, to wit, at the parish aforesaid in the county aforesaid; of which the said E. K. and E. B. had notice: Yet the said E. K. and E. B. not regarding their said promise and undertakings but contriving, &c. (Common conclusion; common money Counts; and conclusion thereto: damages and pledges.)

ad Count more general, without stating any part of the rent paid.

MIDDLESEX, to wit. A. Williams and B. Hide complain of S. Thomas, being in the custody of the marshal of the marshal-see of our lord the now king, before the king himself, in a plea of trespass on the case, &c.: for that whereas one William Dines, before and at the time of making of the promise and undertaking hereafter mentioned, was justly and truly indebted to the said A. Williams and B. Hide in the sum of four pounds fourteen shillings and sixpence of lawful money of Great Britain, part of a larger sum of money (the residue having been duly paid by the said William Dines to the said A. Williams and B. Hide) theretofore received by the said William Dines from the said A. W. and B. H. for and as the price of a horse sold and delivered to them by the said William Dines as sound, but which being unsound had for that cause been returned to and received back by the said William Dines,

Declaration in B. R. on a promise in writing to pay the debt of another in consideration of forbearance. 1st Count, on forbearance generally. 2d Count, on a forbearance for a month; and Opinion thereon.

Statute of
Frauds.

ad Count more
general, without
stating the con-
sideration of the
note.

Dines, to wit, at Westminster in the county of Middlesex; of which said premises the said S. Thomas afterwards, and before and at the time of making the promise and undertaking hereinafter next mentioned, there had notice: in consideration of which said premises, and also in consideration that the said A. Williams and B. Hide, at the special instance and request of the said S. Thomas, would forbear to sue the said William Dines for the recovery of the said sum of four pounds fourteen shillings and sixpence, he the said S. Thomas afterwards, to wit, on the twentieth day of September in the year of Our Lord 1790, at Westminster in the county of Middlesex, by a certain note or memorandum in writing then and there made and signed by him the said S. Thomas, according to the form of the statute in that case made and provided, undertook, and then and there faithfully promised the said A. Williams and B. Hide, to pay them the said sum of four pounds fourteen shillings and sixpence one month after the date of the said memorandum: And the said A. Williams and B. Hide aver, that they, confiding in the said promise and undertaking of the said S. Thomas, so by him made in manner and form aforesaid, did forbear, and from thence hitherto have forbore, to sue the said William Dines for the recovery of the said sum of money first above-mentioned; whereof the said S. Thomas had due notice; and by means thereof, and of his promise and undertaking aforesaid, he the said S. Thomas became liable to pay to them the said A. Williams and B. H. the said last-mentioned sum of money, according to the tenor and effect of the said promise: And whereas the said William Dines, before and at the time of the making of the promise and undertaking of the said S. Thomas hereafter next mentioned, was indebted to the said A. Williams and B. Hide in a certain other large sum of money, to wit, the sum of four pounds fourteen shillings and sixpence of like lawful money, to wit, at Westminster aforesaid; of which the said defendant there had notice: and the said William Dines, being so indebted to the said A. Williams and B. Hide as last aforesaid, heretofore, to wit, on the twentieth day of September in the year of Our Lord 1790, at Westminster aforesaid, in consideration thereof, and also in consideration that the said A. Williams and B. Hide, at the like special instance and request of the said S. Thomas, would forbear to sue and give time for payment of the said last-mentioned sum of money for one month next following, he the said S. Thomas, by a certain other note or memorandum in writing, then and there made and signed by the said S. Thomas, according to, &c. (as before), undertook, and then and there faithfully promised the said A. Williams and B. Hide, to pay the said last-mentioned sum of four pounds fourteen shillings and sixpence within one month next after the date of the said memorandum: And the said A. Williams and B. Hide aver, that they, confiding in the said last-mentioned promise and undertaking of the said S. Thomas, so by him made in manner and form aforesaid, did forbear to sue and give time for payment of the said last-mentioned sum of money for one month next

next following the said last-mentioned promise, to wit, at Westminster aforesaid; whereof the said S. Thomas afterwards, to wit, at the end and expiration of the said one month, to wit, on the twenty-third day of October in the year aforesaid, there had notice; and by means thereof, and according to the tenor and effect of his said promise and undertaking last aforesaid, he the said S. Thomas then and there became liable to pay to the said A. Williams and B. Hide the said last-mentioned sum of money, when he the said S. Thomas should be thereto afterwards requested; Yet the said S. Thomas, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said A. Williams and B. Hide in this behalf, hath not as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said A. Williams and B. Hide, or either of them (although so to do the said S. Thomas was requested by the said A. Williams and B. Hide afterwards, to wit, on the day and year last aforesaid, and often afterwards, to wit, at Westminster aforesaid); but he to pay the same hath hitherto wholly refused, and still doth refuse, to the damage of the said A. Williams and B. Hide of twenty pounds; and therefore they bring their suit, &c. (Pledges, &c.)

From the best consideration that I have been able to give this case, I am strongly inclined to think, that an action may be supported upon it. The note certainly is void, as a negotiable promissory note, under the statute of 17. Geo. 3. c. 30. f. 1.; but, as between the original parties to it, it is also a promise in writing to pay the debt of another, and is founded upon that consideration; as such I see no reason why it may not assume that shape in evidence, and support an action of *assumpsit* upon such consideration, so as to bring the case out of the statute of Frauds. Before the enacting of that statute, any person who unguardedly promised to pay the debt of another on a consideration of forbearance was liable to be called upon for it in an action at suit of the creditor; but to impose sufficient circumspection upon the party

promising, that statute required the promise to be in writing, and to be signed by the person making it; now the promise here is in writing, and signed by the party making it: and as such is intended to be made use of. I do not think there is a case in point upon the subject, but incline to advise an action upon the reasons I have given (in addition to others which I would give if necessary); and particularly as, if the note should be taken as a sufficient note in writing within the statute, it will not require any stamp as an agreement, being within the 4th section of statute 23. Geo. 3. c. 58. exempting memorandums, where the matter thereof shall not exceed 20l. from any stamp duty. If an action should be brought, it will be necessary to state a consideration of forbearance.

T. BARROW.

WILTSHIRE. The right honourable Henry lord A. complains of Robert Sempill, being, &c.: for that whereas one John Sempill, at the time of the making the promise and undertaking hereinafter next mentioned, and for divers, to wit, three years then last past, and from thence until the fifth of April A. D. 1770, was possessed of and in a certain messuage, lands, and tenements, with the appurtenances, situate, lying, and being in the parish of

In consideration that plaintiff would forbear to distrain the goods of J. S. his tenant for rent arrear, defendant undertook to pay the

rent then due, and what would become due at Midsummer.

Fortnell

Fortnell Magna in the county of Dorset, as tenant thereof to the said Henry lord A. under and by virtue of a certain demise thereof to him made by the said H. lord A. at and under the yearly rent of thirty-two pounds sixteen shillings. And whereas, on the sixteenth of October A. D. 1769, forty-eight pence fifteen shillings of the rent aforesaid, for one year and the half of another year then last past, were due and in arrear from the said John S. to the said H. lord A.: And whereas, on the same day and year aforesaid, divers cattle, goods, and chattels of the said John S. of the value of fifty pounds and more, were in and upon the said demised premises, and liable and subject to have been taken by the said H. lord A. as a distress for the said arrears of rent; and the said H. lord A. (1) then and there intended to have taken the said cattle, goods, and chattels of the said John S. as a distress for the said arrears of rent; of all which said premises the said Robert S. afterwards, to wit, on the same day and year last aforesaid, at Salisbury aforesaid in the said county of W. had notice: And whereas the said Robert S. after the time of the making the promise and undertaking hereinafter next mentioned, intended and was about to sell the said cattle, goods, and chattels as soon as conveniently could be, under and by virtue of a certain power and authority to him the said Robert S. for that purpose given by the said John S. he the said Robert S. afterwards, to wit, on the same day and year last aforesaid, at S. in the county of Wilts, in consideration that the said (2) H. lord A. at the special instance and request of the said Robert, *would not distrain* the said cattle, goods, and chattels of the said John S. then upon the said demised premises, but *would forbear* and desist from taking the said cattle, goods, and chattels of the said John S. as a distress for the said arrear of rent so due to the said (3) H. lord A. as aforesaid, undertook, and to the said (4) H. lord A. then and there faithfully promised, that he the said Robert would pay one year's rent of the said rents so due and owing as aforesaid to the said H. lord A. as soon as the said cattle, goods, and chattels could be sold, and would pay another year's rent which would be due on the fifth of April A. D. 1770, on or about Midsummer day then next ensuing, to wit, A. D. 1770: And the said H. lord A. avers, that he, confiding in the said promise and undertaking of the said Robert so made as aforesaid, did not distrain the said cattle, goods, and chattels of the said Robert S. or any of them, but *forbore* and desisted from taking the same, to wit, at S. in the said county of W.: And the said H. lord A. further says, that the said Robert aforesaid, to wit, on the same day and year last aforesaid, at S. aforesaid in the county of W. did sell the said cattle, goods, and chattels for a large sum of money, to wit, the sum of one hundred pounds of lawful, &c. And whereas the said John S. at the time of making the promise and undertaking hereinafter next mentioned, for the space of one year and the half of another year then last

(1) In 3d Count add "by Thomas Smith and John Brand his then bailiffs,"

(2) "Thomas and John,"

(3) "Thomas and John,"

(4) "Thomas and John,"

2d Count, stating John S. to be tenant for year and half at 32l. 10s. and that 42l. 15s. was due for one year and half rent, &c.

past and upwards, had been possessed of and in a certain other messuage, lands, and tenements, with the appurtenances, situate, lying, and being in the parish of Fortnell Magna aforesaid in the said county of D. as tenant thereof to the said H. lord A. at and under the yearly rent of thirty-two pounds ten shillings: And whereas, on the said tenth day of October A. D. 1769, at S. aforesaid in the said county of W. forty-eight pounds fifteen shillings of the rent last aforesaid, for one year and the half of another year then last past, were due and in arrear from the said John S. to the said H. lord A.: And whereas, on the same day and year last aforesaid, divers other goods, cattle, and chattels of the said John S. of the value of other ninety pounds and more, were in and upon the said last-mentioned demised premises, and liable and subject to have been taken by the said H. lord A. as a distress for the said arrear of rent; and the said H. lord A. (1) then and there intended and was going to distrain the same for the said last-mentioned arrears of rent; of all which said last-mentioned premises the said Robert afterwards, to wit, at S. aforesaid, in the said county of W. had notice: And whereas also the said Robert, at the time of making the promise and undertaking hereinafter next mentioned, was in possession of the said cattle, goods, and chattels, he the said Robert afterwards, to wit, on the same day and year last aforesaid, at S. aforesaid in the said county of W. in consideration that the said H. lord A. at the special interest and request of the said Robert, would not distrain the said last-mentioned cattle, goods, and chattels of the said John S. then upon the said last-mentioned demised premises, but would forbear and desist from taking the said last-mentioned cattle, goods, and chattels of the said John S. as a distress for the said last-mentioned rent, undertook, and to the said (2) H. lord A. then and there faithfully promised, that he the said Robert would pay him the said H. lord A. the said last mentioned arrears of rent as soon as the said last-mentioned cattle, goods, and chattels could be sold: And the said H. lord A. avers, that (3) he, relying on the said last-mentioned promise and undertaking of the said Robert, so as aforesaid made, did not distrain the said last-mentioned cattle, goods, and chattels of the said John S. or any of them, as a distress for the said last-mentioned arrears of rent, but forbore and desisted from taking the same, to wit, at S. aforesaid in the said county of W.: And the said H. lord A. further says, that the said cattle, goods, and chattels afterwards, to wit, on the same day and year last aforesaid, were sold for a large sum of money, to wit, the sum of one hundred pounds, that is to say, at S. aforesaid in the said county of W. (Add the 3d and 4th Counts, varying respectively from the 1st and 2d, as in the margin; and a Count for money had and received; and breach to all)

(1) In 4th Count add, "by Thomas Smith and J. B. his bailiffs."

(2) In the 4th Count say, "Thomas and John,"

(3) 4th Count, "Thomas and John."

F. BULLER.

LONDON,

(a) Declaration in C. B. in *assumpsit*, in consideration that plaintiff, who was a constable of the parish, would forbear to offer himself to contract for conveying vagabonds, &c. under 17 G. 2. c. 5 §. 16; defendant, who was also a constable, undertook to allow plaintiff 20*l.* *per annum* if he had the contract.

LONDON, *ss.* John Cox, late of Deptford in the county of Kent, was attached to answer unto George Hampshire in a plea of trespass upon the case, &c. ; and thereupon the said George, by Thomas Wild his attorney, complains : for that whereas, before the making of the promise and undertaking of the said John hereinafter next mentioned, to wit, on tenth April A. D. 1787, at the parish of St. Mary-le-Bow in the ward of Cheap, in L. aforesaid, it was expected that his majesty's justices of the peace of the said county of Kent would, at their then next general quarter sessions of the peace for the said county, make some order or orders for the more regular passing, conveying, and maintaining of such rogues, vagabonds, and incorrigible rogues as might thereafter be passed or conveyed from Deptford aforesaid ; and that the said justices would, by some such order or orders, appoint one of the constables or peace-officers at Deptford aforesaid to convey and maintain all such rogues, vagabonds, and incorrigible rogues, and direct a certain allowance by way of contract to be made to the person who should be elected and appointed by the said justices to such employment : And whereas the said George and the said John, at the time of the making the said promises and undertakings, and also at the time of the session hereinafter mentioned, were severally constables of the parish of *St. Paul*, Deptford, aforesaid, and respectively eligible and capable of being appointed to such employment and contract ; and thereupon, in consideration of the premises, and also in consideration that the said George, at the special instance and request of the said John, would forbear to offer himself to the justices of the said county as a candidate for such employment and contract as aforesaid, he the said John then and there, to wit, on the day and year aforesaid, at the said parish of St. Mary le-Bow in the ward aforesaid, in London aforesaid, undertook, and faithfully promised the said George, that in case he the said John should be appointed by the said justices to such employment and contract as aforesaid, he the said John would pay to the said George, during so long time as he should continue to hold the same, the yearly sum of twenty pounds of lawful money of Great Britain : And the said George says, that he, confiding in the said promise and undertaking of the said John, did, from the time of the making thereof, wholly forbear to offer himself to the said justices as a candidate for such employment and contract ; and that the said John afterwards, to wit, on the seventeenth April in the year aforesaid, was duly appointed thereto by the justices of the said county, at a general quarter session of the peace then holden at Maidstone in and for the said county, and continued to hold the same for a long space of time, to wit, from thence until and upon the seventeenth April A. D. 1789, to wit, at the parish last aforesaid in the ward aforesaid, in L. aforesaid ; by reason of which said several premises the said John then and there, to wit, on the day and year last aforesaid, at the parish last aforesaid, in the ward aforesaid, in L. aforesaid, became liable to pay, and ought to have paid, to the said George a large sum of money, to wit, the sum

(a) See Considerations not Classed. This precedent is not strictly reducible to any head.

of forty pounds of lawful money of Great Britain, according to the form and effect of the said promise and undertaking so by him made in that behalf as aforesaid : And whereas the said John afterwards, on the day and year last aforesaid, at the parish last aforesaid in the ward aforesaid, in L. aforesaid, was indebted to the said George in the sum of sixty pounds of lawful, &c. (for goods sold ; *quantum meruit* thereon ; *indebitatus assumpsit* for money had and received ; for money lent and advanced ; for money due on the balance of an account) : Yet the said John, not regarding the said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this behalf, hath not (although often requested) paid the said sum of forty pounds in the first Count of this declaration mentioned, or the said several sums of money in the five last Counts thereof mentioned, or any part thereof, to the said George ; but hath hitherto wholly refused, and still refuses so to do, to the damage of the said George, of one hundred pounds ; and therefore he brings suit, &c.

S. MARRYATT.

If the allowance of the magistrates to the vagrant contractors had been either fixed by statute, or ascertained by a previous order of sessions, I apprehend the plaintiff's forbearance to stand for the appointment would have been a good consideration for the defendant's *assumpsit* to pay him a proportion of the profits. In the case of an office with a *stated* salary, one candidate's declining a contest for it will clearly be a good foundation for a promise by another candidate to divide the emoluments. I conceive, however, that any compact between two persons that has a tendency to enhance expense either to one individual or the public, by preventing their contracting to the best ad-

vantage, is an illegal agreement on which no action can be maintained ; and, in this instance, the allowance to be made by the sessions seems necessarily to depend on the competition for the appointment. I have done all I can, under the circumstances of the case, to prevent this objection to the first Count of the declaration appearing on the record ; but if the plaintiff should obtain a verdict for that part of his claim, as well as the balance of the other accounts between him and the defendant, I advise that the damages of the first Count should be separately assessed from the others, to prevent the judgment being arrested for the whole.

S. MARRYATT.

GEORGE LEWIS complains of John Stone, being, &c. : *Special assumpsit* for that whereas one James Bowder, before the making of the promise and undertaking of the said J. S. hereafter next mentioned, to wit, on the day of A. D. 1791, to wit, would permit at, &c. aforesaid, was justly indebted unto the said George in a large sum of money, to wit, in the sum of one hundred pounds of lawful, &c. ; and being so indebted, he the said J. B. for the better securing to the said George the payment of the said sum of money and interest thereon, did afterwards, to wit, on the same day and year, at, &c. aforesaid, duly execute and deliver to the said G. as well a certain writing obligatory, conditioned for the payment of the said sum of money, with lawful interest, at a certain interest, provided no extent issued at the suit of the crown for three months, and a sufficiency was left in his hands to satisfy the debt.

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tain day then to come and unexpired, as also a certain instrument or warrant, bearing even date with the said writing obligatory, and whereby the said J. B. authorized and empowered certain persons therein named to appear for him the said J. B. in his majesty's court of king's bench at Westminster, as of Trinity term then next ensuing, in an action of debt upon bond for the sum of one hundred pounds and interest, at the suit of the said George, and to suffer judgment, by default or otherwise, to pass against him the said J. B. in the said action to be entered up of record in the said court, to wit, at, &c. aforesaid: And whereas the said sum of one hundred pounds, and the lawful interest thereon, amounting in the whole together to a large sum of money, to wit, to the sum of one hundred and seventeen pounds ten shillings of like lawful money, being due and wholly unpaid to the said George, he the said George, for the obtaining and recovery thereof, did afterwards, to wit, in Trinity term in the year of the reign of his present majesty, in the court of our said lord the king, before the king himself here (the said court then and still being held at Westminster in the said county of Middlesex aforesaid), cause judgment to be duly entered up at the suit of him the said George against the said J. B. upon the said bond and warrant of attorney (as by the record and proceedings thereof, remaining in the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid, will more fully appear; and did afterwards, to wit, in that very same Trinity term in the said year aforesaid, to wit, at Westminster aforesaid, sue and prosecute out of the said court of our said lord the king, before the king himself here, to wit, at Westminster aforesaid (the said court then and still being held, &c.), upon the said judgment against the goods and chattels of the said J. B. a certain writ of our said lord the king called a *feri facias*, directed to the sheriff of the county of Surry; by virtue of which said writ the then sheriff of the said county of S. did afterwards, to wit, on the day of in the year last aforesaid, at, &c. aforesaid, under and by virtue of the said writ, enter into and take possession of divers goods and chattels of the said J. B. being within the said bailiwick of the said then sheriff, as by the said writ he was commanded, and had kept and detained the same in his hands, custody, and possession, for the purposes therein mentioned, to wit, at Westminster aforesaid; and thereupon afterwards, and whilst the said sheriff so was in the possession of the said goods and chattels, by virtue of the said writ as aforesaid, at the suit of the said George for the cause aforesaid, to wit, on the day of A. D. 1774, at, &c. aforesaid, a certain discourse was had and moved by and between the said George and the said J. S. of and concerning the said execution; and on the said J. B.'s giving and executing to the said T. S. a bill of sale of his the said T. B.'s goods, chattels, and effects in the county of S. it was, to wit, on the day and year last aforesaid, at, &c. aforesaid, agreed by and between the said George and the said J. S. (after the said J. B. had so given and executed

executed to him the said J. S. a bill of sale of his the said J. B.'s goods, chattels, and effects in the county of S. as aforesaid), that the said J. S. would pay to the said George the said sum of one hundred and seventeen pounds ten shillings, being the principal and interest due to the said George by virtue of the said writing obligatory and warrant of attorney as aforesaid (exclusive of and besides all costs), when he should be thereto afterwards requested, provided that no extent issued from the crown for any duty due from the said J. B. which might legally take the effects of the said J. B. and not leave a sufficiency to satisfy the said debt and interest; and it was then and there agreed, by and between the said George and the said J. S. that the said J. S. was immediately to possess himself of the effects of the said J. B. and to remove the same off the premises, and out of the custody of the said J. B.; and that if he should remove effects sufficient off the premises of the said J. B. to satisfy the said George's debt, that then and in that case he was absolutely to pay to him the said principal sum and interest so due, if the said effects should not, within three months, be taken back at the suit of the crown; and the said agreement being so made (mutual promises): And the said George in fact saith, that although he the said George, confiding, &c. did afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, in pursuance of the said agreement, withdraw the said execution, and hath not at any time since hitherto proceeded thereon; and although the said J. B. afterwards, to wit, on the day and year last aforesaid, executed, and as his act and deed delivered unto the said J. S. a bill of sale of all and singular the goods, chattels, and effects, of him the said J. B. in the county of S. to wit, at Westminster aforesaid; and the said J. S. by virtue thereof, then and there possessed himself of the said effects of the said J. B. to wit, at Westminster aforesaid: And the said George in fact further saith, that no extent issued from the crown for any duty due from the said J. B. which might legally take the effects of the said J. B. before the said J. S. might have possessed himself of the said effects of the said J. B. to wit, at Westminster aforesaid; and that the costs and charges which he the said George had sustained, laid out, expended, and been put unto, for and on account of the premises aforesaid, amounted to a large sum of money, to wit, pounds of like lawful money, at, &c. aforesaid; whereof the said J. S. afterwards, to wit, on the day and year last aforesaid, at, &c. aforesaid, had notice: Yet the said George in fact further saith, that he the said J. S. not regarding, &c. but contriving, &c. hath not as yet paid the said sum of pounds, or any part thereof, to the said George, (although there was a sufficiency of the said goods and chattels of the said J. B. to pay the same, and although the said J. S. was then and there requested by plaintiff, &c. &c.) (2d Count, reciting special *assumpsit* as before, making it in consideration that plaintiff would *withdraw*, &c. he undertook to pay, &c. provided, &c.; 3d Count as last, only in consideration that he *had withdrawn* at request, &c.; 4th and 5th Counts; goods

bargained and sold; 6th, money lent, laid out, and had and received; and common conclusion to the three last Counts.)

C. RUNNINGTON.

Declaration, in consideration that plaintiff, at the request of defendant, would forbear to arrest or commence any action against one A. B. she promised to pay the debt.

PALACE COURT, *ff.* James Penny, by A. B. his attorney, complains of Lucy Bassett in a plea of trespass on the case, &c.: for that whereas, before the promise and undertaking of the said defendant hereafter next mentioned, that is to say, on, &c. at Southwark in the county of Surry, and within the jurisdiction of this court, one T. H. now deceased, made his certain note in writing, commonly called a promissory note, his own proper hand and name being thereto subscribed, bearing date the day and year aforesaid, and then and there delivered the said note to the said plaintiff, which said note he the said H. B. promised to pay to the said plaintiff by the name of, &c. or order, six months after the date of the said note, fifteen pounds for value received by him the said H. B.; by means whereof, and by form of the statute in such case made and provided, he the said H. B. became liable to pay to the said plaintiff the said sum of money in the said note specified, according to the tenor and effect of the said note, to wit, at, &c.: And the said plaintiff further saith, that he the said H. B. not having paid the aforesaid money in the said note specified, or any part thereof, to said plaintiff, according to the tenor and effect of said note, but having made default in such payment, he the said plaintiff intended and was about to commence an action or suit at law against the said H. B. for the recovery of the aforesaid sum of money in the aforesaid note specified, and arrest him by his body in such action, to wit, at, &c.: and thereupon afterwards, and after the expiration of the time appointed for the payment of the money in the said note specified, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of said defendant, would not commence such action or suit at law against the said H. B. on the occasion and for the purpose and cause aforesaid, but would forbear so to do, she the said defendant undertook, and then and there faithfully promised him said plaintiff to pay him the said sum of fifteen pounds in the aforesaid note specified: And the said plaintiff avers, that he, confiding in the said promise and undertaking of said defendant, so by him in manner and form aforesaid made, did not, at any time from the making of the said promise and undertaking of said defendant until the day of the death of the said H. B. which happened before the levying the plaint of the said plaintiff, to wit, on, &c. commence any action at law against the said H. B. upon the occasion and for the purpose and cause aforesaid, nor hath he at any time whatsoever since the death of the said H. B. hitherto commenced or brought any action or suit against the representatives of the said H. B. for or on account of the said sum of money in the aforesaid note specified, but hath always, from the time of the making of the promise and undertaking of said defendant, hitherto

Any day about the time.

hereto forborne to commence or bring any action or suit, to wit, at, &c. in, &c.: Yet the said defendant, not regarding his said promise and undertaking, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, hath not as yet paid to the said plaintiff the said sum of fifteen pounds in the aforesaid note specified, or any part thereof (although a reasonable time for that purpose hath long since elapsed, and to perform her said promise and undertaking in that respect she the said defendant was requested by the said plaintiff before the levying the plaint of the said plaintiff, to wit, at, &c. and often afterwards, at, &c. in, &c.): but she to do this hath hitherto wholly refused, and still refuses so to do, and the said sum of money so due and owing to the said plaintiff from the said H. B. as aforesaid, and every part thereof, is still in arrear and unpaid to the said plaintiff, to wit, at, &c.: And whereas ^{2d Count.} heretofore, to wit, on, &c. in, &c. one H. B. was indebted to the said plaintiff in a large sum of money, to wit, the sum of fifteen pounds of lawful, &c. upon a certain consideration before then arising and moving from the said plaintiff to said defendant, within the jurisdiction of this court, to wit, at, &c.; and the said H. B. being so indebted as aforesaid, the said plaintiff intended and was about to sue him the said H. B. for the recovery of the said sum of money so due and owing to him said plaintiff as aforesaid: and thereupon afterwards, to wit, on, &c. at, &c. in, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would forbear to sue the said H. B. on the occasion, and for the purpose and cause aforesaid, she the said defendant undertook, &c. said plaintiff to pay him the said sum of money so due and owing from the defendant as aforesaid: And the said plaintiff avers, that he the said plaintiff, confiding in the said promise and undertaking of said defendant so by her in manner and form aforesaid made, hath always, from the time of the making of the said last-mentioned promise and undertaking of said defendant, hitherto forborne to sue the said H. B. and hath never commenced any action or suit against him in this behalf, on the occasion and for the purpose and cause aforesaid; and although a reasonable time for the payment of the said money so due and owing from him the said H. B. to the said plaintiff as aforesaid, hath long since elapsed, to wit, at, &c.: Yet said plaintiff in fact further saith, that the said defendant, not regarding his said promise and undertaking, but contriving, &c. to deceive, &c. the said plaintiff in this behalf, hath not as yet paid the said sum of money so due and owing from the said H. B. to the said plaintiff as aforesaid, or any part thereof, to the said plaintiff (although to perform her promise and undertaking in that respect the said defendant, before the levying the plaint of the said plaintiff against her the said defendant, to wit, on, &c. and often afterwards, to wit, at, &c. in, &c. was requested by said plaintiff); but she so to do hath hitherto wholly refused, and still refuses so to do, and the said sum of money so due and owing from the said H. B. as aforesaid, and every part thereof, is still in arrear and unpaid to said plaintiff, to

wit, at, &c. to the damage of the said plaintiff of forty pounds,
&c. &c. V. LAWES,

Declaration, in consideration that plaintiff would forbear to enter up judgment against one A. B. on a warrant of attorney, defendant promised to pay the money on a certain day.

PALACE COURT, to wit. F. W. by A. B. his attorney, complains of R. M. in a plea of trespass on the case, &c.: for that whereas, before the making of the promise and undertaking hereafter next mentioned, to wit, on, &c. at, &c. within the jurisdiction of this court, one J. S. to secure the payment of twenty-nine pounds then due and owing from him the said J. S. to the said plaintiff, did, by a certain writing, commonly called a warrant of attorney, then and there made by him the said J. S. and duly executed and delivered to the said plaintiff, desire and authorize one J. W. and one R. H. or any other attorney of his majesty's court of king's bench, to whom the said warrant of attorney was directed, to appear for him the said J. S. to wit, in the said court of king's bench, as of the then next Michaelmas, the then next Hilary, or any other subsequent term, and then and there to receive a declaration for him in an action of debt for goods sold and delivered at the suit of the said plaintiff, by the name of, &c. and thereupon to confess the said action, or else to suffer a judgment, by default or otherwise, to pass against him said J. S. in the same action, to be thereupon forthwith entered up against him of record in the said court, for the said sum of fifty-nine pounds and costs of suit, upon this condition thereunto annexed, to wit, that if the said J. S. should pay the aforesaid sum of twenty-nine pounds to said plaintiff in manner following, that is to say, ten pounds, part thereof, on, &c. and the remaining sum of, &c. on, &c. then that said warrant of attorney should be void, or else should remain in full force; and that in case default should be made in the said first payment, said plaintiff should be at liberty to enter up said judgment in said warrant of attorney mentioned as aforesaid, and sue out an execution: And the said plaintiff in fact further saith, that the said J. S. having made default in the said first payment in the said condition to the aforesaid warrant of attorney annexed as aforesaid specified, by not paying the said sum of ten pounds in the said condition mentioned, and thereby stipulated and appointed to be made, on, &c. he the said plaintiff, just before the promise and undertaking of the said defendant hereafter next mentioned, intended and was about to put the aforesaid warrant of attorney in force against the said J. S. and to cause the said judgment therein mentioned to be entered up against him said J. S. by virtue of the said warrant of attorney, and to sue out process of execution against him on such judgment, as said defendant well knew: and thereupon afterwards, and before the levying of the plaint of the said plaintiff against said defendant, to wit, on, &c. in, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would not enter up, or cause to be entered up, such judgment as aforesaid against the said J. S. nor take him in execution, but would forbear so to do until the twenty-ninth day

of, &c. he the said defendant, by a certain memorandum or note in writing, bearing date, &c. and subscribed by him the said defendant according to the form of the statute in such case made and provided, undertook, and then and there faithfully promised the said plaintiff, to pay him the said sum of ten pounds (that is to say, the sum of ten pounds so due and payable from the said J. S. on, &c. as aforesaid) on, &c. or produce the person of the said J. S. on that day to him the said plaintiff: And the said plaintiff avers, that he, confiding in the said promise and undertaking of said defendant, so by him in manner and form aforesaid made, did not, at any time after the making of the promise and undertaking of the said defendant between that day and the aforesaid twenty-ninth day of, &c. or on that day, enter or cause such judgment as aforesaid to be entered up against the said J. S. nor did he take him, nor cause him the said J. S. to be taken in execution at the suit of him the said plaintiff; but on the contrary, during all that time, forbore so to do, to wit, at, &c. in, &c.: And said plaintiff in fact further saith, that although the said J. S. did not, at any time before or on the said twenty-ninth day of, &c. pay or cause the said sum of ten pounds so due and payable from him the said J. S. to the said plaintiff, on, &c. to be paid to the said plaintiff; whereof, and of the aforesaid forbearance by him said plaintiff, said defendant, on, &c. at, &c. in, &c. had notice: Yet said defendant, not regarding, &c. but contriving, &c. did not, on, &c. or at any other time, pay the said sum of ten pounds so due and payable from the said J. S. on, &c. or any part thereof, nor did he on that day produce the person of said J. S. to the said plaintiff, (although to perform his said promise and undertaking, so by him made as aforesaid, he the said defendant was requested by said plaintiff, on, &c. at, &c. in, &c.); but wholly refused and neglected so to do: And the said plaintiff avers, that the said J. S. hath never been taken in execution at the suit of the said plaintiff for the said ten pounds so due and payable from him the said J. S. on, &c. or any part thereof, but the said sum of ten pounds still remains wholly unpaid to him the said plaintiff by the said defendant, or the said J. S. to wit, at, &c. contrary to the tenor and effect, true intent and meaning, of the said promise and undertaking of said defendant, in manner and form aforesaid made, to wit, at, &c.: And whereas, &c. (Add a second Count like the former, omitting the defeazance, and making the consideration for the forbearance to take in execution only, as nothing might have been said about entering up judgment. Add the common Counts; account stated; and common conclusion.)

V. LAWES.

HEREFORDSHIRE, *ss.* John Tomson was attached to answer unto Francis Freene in, &c.; and thereupon said plaintiff, by William Johnston his attorney, complains: that whereas the Plaintiff had commenced an action against defendant, and in consideration he would prevent any further proceedings, defendant promised to pay to A. B. plaintiff's attorney, all costs as between attorney and client.

F f 4

said

said plaintiff, before the making of the promise and undertaking hereafter next mentioned, commenced a certain action or suit at law in the court of our said lord the king of the bench here against said defendant, upon and for a certain cause of action before then accrued to him said plaintiff against said defendant, for and on account of his having before then sold a certain horse to him said plaintiff as and for a horse of the age of six years and no more, and as and for a sound horse, when in truth and in fact the said horse, at the time of such sale thereof to him said plaintiff, was above the age of six years and unsound; and he said plaintiff, at the time of the making of the said promise and undertaking of said defendant hereafter next mentioned, had been at and incurred certain costs and charges in the prosecution of said action or suit: and thereupon afterwards, and whilst the said action or suit was depending in the said court of our said lord the king of the bench here, and before the same was determined, to wit, on, &c. at, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would prevent any further proceedings being had against him said defendant in the aforesaid action or suit, he said defendant undertook, and then and there faithfully promised said plaintiff, to pay unto William Johnston, the attorney of said plaintiff in said action or suit, all costs as between attorney and client which had before that time been and were then accrued and incurred by him said plaintiff in the said action or suit, when the same should be demanded of him said defendant: And said plaintiff avers, that he, confiding in said promise and undertaking of said defendant, so by him in manner and form aforesaid made, did immediately after the making of the said promise and undertaking of said defendant, and hitherto hath prevented any further proceedings being had against him in said action or suit so by him commenced as aforesaid; and the said plaintiff hath always, from the time of the making of the said promise and undertaking of said defendant, hitherto wholly desisted, and still doth desist, from any further proceedings in said action or suit, to wit, at, &c.: And the said plaintiff in fact saith, that the costs, as between attorney and client, which, at the time of the making of said promise and undertaking of said defendant, had been and were accrued to and in and by him said plaintiff in the aforesaid action or suit so by him commenced as aforesaid, amounted unto a large sum of money, to wit, the sum of fifty pounds of lawful, &c.; whereof said defendant afterwards, to wit, on, &c. had notice; and the costs were then demanded of him said defendant by the aforesaid W. J. the attorney for said plaintiff in the aforesaid action or suit: Yet said defendant, not regarding his said promise and undertaking, so by him in manner and form aforesaid made, but contriving, &c. did not, when said costs were demanded of him as aforesaid, nor hath he at any other time whatsoever paid said costs, or any part thereof, either to said W. J. so being the attorney of said plaintiff in the aforesaid action or suit as aforesaid, or to him said plaintiff (although to perform his said promise and undertaking, so by him

in manner and form aforesaid made, he said plaintiff was requested as aforesaid, and often afterwards, to wit, at, &c.) ; but he to pay the same, or any part thereof, to the said W. J. so being the attorney of him said plaintiff as aforesaid, or to him said plaintiff, hath always refused and neglected, and therein wholly failed and made default, contrary to the tenor and effect of his aforesaid promise and undertaking in that respect made as aforesaid ; whereby he said plaintiff was forced and obliged to pay unto said W. J. his attorney in said action or suit so by him commenced as aforesaid ; the said costs so accrued to and incurred by him said plaintiff in prosecution of said action or suit, to wit, at, &c. And whereas, 2d Count. &c. (add a 2d Count like the 1st, only omitting the cause of action ; 3d and 4th Counts like the 1st and 2d, only making the promise to pay plaintiff his costs, leaving out everything concerning the attorney and the *per quod* ; 5th Count, money laid out, &c. &c. ; 6th Count, account stated ; and common conclusion to the two last Counts.)

V. LAWES.

MIDDLESEX, ff. John Benson complains of Thomas Ber-
riman, gent. one of the attornies of the court of our lord the now
king, before the king himself, present here in court in his own pro-
per person, in a plea of trespass on the case, &c. : for that whereas,
before the making of the promise and undertaking of said defendant
hereafter next mentioned, said plaintiff had commenced a certain
action or suit at law in the court of our lord the now king, before
the king himself here, against said defendant, upon a certain cause
of action before that time accrued to him said plaintiff against said
defendant, that is to say, a certain cause of action for or in respect to
certain defamatory words of and concerning said plaintiff, and a
certain issue between him said plaintiff and said defendant to be
tried by the country was afterwards joined in said action or suit, and
according to the course and practice of the said court here entered
on record for trial, and the record of *nisi prius* in such action or suit
was in due manner passed and entered : and thereupon afterwards,
to wit, on the fifteenth July A. D. 1783, at W. in the said county
of M. in consideration that said plaintiff, at the special instance and
request of said defendant, had before that time withdrawn said record
of *nisi prius* so by him said plaintiff passed and entered as aforesaid,
and agreed to stay all proceedings in said suit, he said defendant un-
dertook, and then and there faithfully promised said plaintiff, to pay
him, on or before the first day of October then next ensuing, a
moiety or half part of all such monies, costs, charges, payments, and
disbursements as he and his agent had then actually laid out, ex-
pended, or been put unto, or which they should or might thereafter
be obliged to pay for or to counsel, pleaders, witnesses, coach-hire
expences, fees of office, stamp duty, or otherwise howsoever, for,
concerning, or in any manner relating to said cause : And said
plaintiff avers, that he, confiding in said promise and undertaking
of said defendant, so by him in manner and form aforesaid made, did
immediately upon the making thereof stay, and always from thence
hitherto

Declaration, in
consideration
that plaintiff,
at defendant's
request, had
withdrawn the
record, and en-
gaged to stay
proceedings in a
certain action
against defend-
ant, he under-
took to pay him
half his costs at
a particular day.

hitherto hath stayed, all proceedings in the aforesaid action or suit, which hath never since been further prosecuted or proceeded in by him said plaintiff, to wit, at, &c. aforesaid : And said plaintiff in fact further saith, that the monies, costs, charges, payments, and disbursements, which he said plaintiff and his agents did actually lay out, expend, and were put unto, for and in respect to counsel, pleaders, witnesses, coach-hire expences, fees of office, stamp duty, and other matters relative to the aforesaid suit or cause against said defendant, amounted unto a large sum of money, to wit, the sum of eighty-one pounds ten shillings of lawful, &c. and that a moiety or half part thereof amounted to a certain other large sum of money, to wit, the sum of forty pounds fifteen shillings of like lawful, &c. to wit, at, &c. aforesaid ; whereof said defendant afterwards, and before the exhibiting of this bill, to wit, on the day and year first above-mentioned, there had notice ; and thereby, and by reason of his aforesaid promise and undertaking, he said defendant then and there became liable to pay, and ought to have paid, to said plaintiff, the last-mentioned sum of money, to wit, at, &c. aforesaid. (Counts for money laid out, &c. ; account stated ; and common conclusion to the whole.)

V. LAWES.

In consideration that plaintiff's testator would withdraw a record in an action of trespass, when cause ready for trial and witnesses came out of the country, &c. defendant promised to pay plaintiff's testator sol. and all costs to the witnesses.

MIDDLESEX, ss. David Reid, esquire, executor of the last will and testament of John Tausk deceased, complains of Richard Nash, esquire, being in the custody, &c. : for that whereas, before the making of the promises and undertakings of the said Richard hereafter next mentioned, to wit, in Easter term now last past, before our lord the king at Westminster, came the said John Tausk in his lifetime, by George Green his then attorney, and brought into the court of our said lord the now king then there his certain bill against Robert Johnson, then being in the custody of the marshal, &c. of a plea of trespass and assault, and found pledges to prosecute his said bill, to wit, J. D. and R. R. ; and by his said bill he the said J. Tausk in his lifetime then and there complained against the said Robert ; for that the said Robert, on the second day of January A. D. 1748, with force and arms, to wit, with swords, staves, sticks, and fists, made an assault upon the said John, &c. &c. (go on to the end of the declaration) ; and therefore he brought his suit, &c. : And afterwards, to wit, on Friday next after the morrow of the Holy Trinity now last past, until which day the said Robert had leave to imparl to the said bill of the said John, and then to answer, &c. before the lord the king at Westminster, came as well the said John in his lifetime, by his said attorney, as the said Robert, by J. M. his attorney : and the said Robert defended the force and injury, when, &c. and said he was not guilty of the trespass and assault as the said J. Tausk had so complained against him ; and of that he put himself upon the country ; and the said J. Tausk did the like, &c. as by the record and proceedings thereof, remaining in the said court of our lord the now king, before the king himself, at Westminster aforesaid, more fully appears : And whereas afterwards, and be-

fore

fore the making of the promises and undertakings of the said Richard Nash hereafter next mentioned, the said issue so joined between the said J. Tausb and Robert Johnson was about to be tried by a jury at the county of Middlesex, at a sitting of *nisi prius*, held in the great hall of pleas, commonly called Westminster-hall, in the county of Middlesex aforesaid, on the fifteenth day of June A. D. 1749, before the sittings for trial of causes depending in the said court of king's bench, at Westminster, after Trinity term now last past, before Sir William Lee, knight, then and still chief justice of our said lord the now king, assigned to hold the pleas before the king himself; and for that purpose the said John in his lifetime had, before the making of the promises and undertakings of the said Richard Nash hereafter next mentioned, in due manner entered the said cause with the then marshal of the said court for trial at the said sitting, and had also brought and delivered into the said court the record of the said issue for the said trial, and *R. Biggs, C. Nugent, W. Bailey, A. Cleland, and James Lewis* (1), (1) "*doers*" in ad Count. witnesses on the part of the said J. Tausb, had been duly summoned and subpoenaed to attend the said trial, to give evidence thereon on the said part of the said J. Tausb; which said witnesses were, at the time of the making of the said promise and undertaking of the said Richard Nash hereafter next mentioned, either come from and out of the county of Somerset, for that purpose, to Westminster, in the county of Middlesex, or were on their journey from the said county of Somerset to Westminster aforesaid for that purpose, *for which journey and attendance the said witnesses, and every of them, were and was intitled to be paid and satisfied by the said J. Tausb* (2); of all which said premises the said Richard Nash afterwards, and before the making of the said promises and undertakings of the said Richard Nash hereafter next mentioned, to wit, on said fifteenth day of June A. D. 1749 aforesaid, at W. aforesaid, had notice: and thereupon afterwards, and before the said cause was or could be tried, to wit, on the same day and year last aforesaid, at W. aforesaid, in consideration that the said John in his lifetime, at the special instance and request of the said Richard Nash, would not proceed to trial in the said cause at the said sittings, but would withdraw his said record, and would not any further proceed in the said plea, he the said Richard Nash undertook, and then and there faithfully promised the said John in his lifetime, to pay to the said J. Tausb the sum of fifty pounds, and all the said John's costs of the said suit to that time, to be taxed by the proper officer of the court of king's bench, in which said taxation should be allowed, without any abatement, all such money as the said J. Tausb paid, or was liable to pay, to one S. Purlevent, an attorney at law, for all matters done and transacted by him in the said suit, on producing the said S. P.'s receipts for the same, and would also pay all the said witnesses for their said journey and attendance, ** to wit, the said R. Biggs sixteen guineas, the said C. Nugent twenty guineas, the said W. Bailey sixteen guineas, the said A. Cleland sixteen guineas, and the said J. Lewis as much as he was or should be entitled*

titled unto: And the said David Reid in fact saith, that by the said J. Tausb in his lifetime giving credit to the said promises and undertakings of the said R. Nash, he the said J. Tausb did not proceed to trial in the said cause at the said sitting, and afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, at the instance and request of the said R. Nash, he the said J. Tausb withdrew the said record, and did not ever in his lifetime, after the making of the said promises and undertakings of the said R. Nash, proceed any farther in the said plea; of all which said particulars he the said R. Nash afterwards there had due notice: Yet the said R. Nash, not regarding, &c. (common conclusion for the fifty pounds; 2d Count like the 1st, only omitting what is in *italic*, and inserting what is in the margin; 3d Count like the 1st, only omitting what is in *italic* at this mark *; common conclusion to both 2d and 3d Counts for fifty pounds each; to said David Reid's damages three hundred pounds; suit, &c.; *proferet* letters testamentary, &c.; pledges, &c.)

Drawn by MR. WARREN.

Plea, Statute of
Frauds, &c. 29-
Car. 2. c. 3
§ 4.

(*Non Assumpsit*), and then by leave of the Court (*actio non*); because he says, that long before the making of the promises and undertakings in the said declaration mentioned, that is to say, by a certain act of parliament made at a parliament begun and holden at Westminster, in the county of Middlesex, on the eighth day of May A. D. 1661, and from thence continued by several prorogations to fifteenth February 1676, entitled, "An Act for prevention of Frauds and Perjuries," it was and is, amongst other things, enacted, that from and after the four and twentieth day of June in the year of Our Lord 1677, no action should be brought whereby to charge any executor or administrator upon any special promise, to answer damages out of his own estate, whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriages of another person, or to charge any person upon any agreement upon consideration of marriage, or upon any contract for sale of lands, tenements, or hereditaments, or any interest in or concerning them, or upon any agreement that was not to be performed for the space of one year from the making thereof, unless the agreement upon which such action should be brought, or some memorandum or note thereof should be in writing, signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized, as by the said act (amongst other things) more fully appears: And the said Richard Nash further saith, that the said David Reid hath exhibited his said bill, and brought his said action, against him the said Richard Nash, upon the promises and undertakings in the said declaration mentioned, for the default of the said Robert Johnson in the said declaration mentioned, and for no other purpose, and there is not now, nor ever was, any agreement in writing touching the promises and undertakings of the said Richard Nash in the said declaration mentioned, nor any of them, nor is there, or ever was, any memorandum or note of them, or any of them, signed either

by

by the said Richard Nash, or by any other person thereunto by him fully authorized: And this, &c.; wherefore, &c. if, &c.

JOHN FORD.

Reid and Nash, Lord Raymond, 1087.
2. Wilf. 94. 3. Burr. 1888, 1889, 1890.

To this plea a general demurrer was drawn by me, and the defendant joined in demurrer, and the cause was tried, argued, and judgment on second argument

given by the whole court for plaintiff, the case being unanimously agreed not to be within the statute, because of the new consideration on staying a suit begun, and particularly of withdrawing the record.

THOMAS WARREN.

LONDON, to wit. S. P. late of, &c. was attached to answer R. T. K. in a plea of trespass on the case; and thereupon the said plaintiff, by A. B. his attorney, complains: that whereas the said defendant, before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. settled accounts with the said plaintiff of and concerning divers sums of money: and thereupon, in consideration that the said plaintiff, at the special instance of the defendant, had then and there promised the said defendant, in settling such accounts, to charge him the said plaintiff with the sum of two hundred and twelve pounds eighteen shillings and eightpence currency money of New-York, as a sum of money due to the said defendant from one S. K. for the said defendant's proportion of a certain insurance recovered in England, the said defendant then and there undertook, and faithfully promised the said plaintiff, that if thereafter it should appear that there was not the above-mentioned sum due to him the said defendant from the said S. K. for the said defendant's proportion of insurance money, he the said defendant should make up the deficiency thereof to the said plaintiff: And the said plaintiff avers, that afterwards, to wit, on, &c. at, &c. it did appear that the said sum of two hundred and twelve pounds eighteen shillings and eightpence current money of New-York was not due, nor was any part thereof due, to the said defendant from the said S. K. for the defendant's proportion of insurance received in England, or was charged in the said accounts; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice from the said plaintiff; by reason whereof the said defendant became liable to pay, according to his promise and undertaking aforesaid, or ought to have paid, to the said plaintiff, the said sum of two hundred and twelve pounds eighteen shillings and eightpence current money of New-York aforesaid, so charged to the said plaintiff in the said account of the defendant as aforesaid, and was then and there requested to pay the same to the said plaintiff: And the said plaintiff avers, that the said sum of two hundred and twelve pounds eighteen shillings and eightpence current money of New-York aforesaid, at the time of making the said promise and undertaking, was, and ever since hath been, and still is, of the value of pounds of, &c. to wit, at, &c. (Common counts.)

Declaration, in consideration upon settling accounts between plaintiff and defendant, the plaintiff would give defendant credit for 212l. 18s. 8d. New-York currency, due from one S. K. to defendant, defendant promised, that if that money was not due from S. K. to defendant, to pay him (plaintiff) the money, against defendant for not paying the money.

GEO. WOOD.

To

TO INDEMNIFY, AND ON CONTRACTS OF INDEMNITY.

Upon an agreement between plaintiffs and defendants, that the latter should be *guarantees* to the former for the produce of a cargo of fish, consigned by plaintiffs, at defendant's request, to their correspondents at Bilboa.

LONDON, to wit. William Norman and Richard Harris Redford complain of John Michael Perez, Joseph Echalar, and Emanuel Bassarette, being, &c. : for that whereas the said defendants, first June 1786, at L. aforesaid, in the parish, &c. in consideration that the said plaintiffs had, at the special instance and request of the said defendants, consigned from Newfoundland in North America, to certain persons carrying on and using in trade, in parts beyond the seas, to wit, at Bilboa in the kingdom of Spain, the name, style, and firm of Quintance and Basturia, a certain cargo of fish, containing divers, to wit, three thousand four hundred quintals, of great value, to wit, of the value of four thousand pounds, one-third part thereof for and on account of the said persons so as aforesaid using the name, style, and firm of Q. and B. one-fourth part thereof for and on account of one A. Bidwell, and the residue thereof to be disposed of by them for and on account of the said plaintiffs, they the said defendants undertook, and then and there faithfully promised the said plaintiffs, on receipt of the bill of lading of the said cargo, to accept bills of exchange to be drawn on them by the said plaintiffs at forty days sight, to the amount of the third part of the said cargo so as aforesaid consigned to the said persons so using the name, style, and firm of Q. and B. for and on their account; and that on the arrival of the vessel in which the same should be shipped at Bilboa, seven shillings per quintal should be remitted by the said persons so using the name, style, and firm of Q. and B. to the persons concerned in the residue of the said cargo, in bills of exchange payable in London, and that the said defendants would be *guarantees* to the said plaintiffs for the said persons so using the name, style, and firm of Q. and B. and see them the said plaintiffs reimbursed the produce of the residue of the said cargo: And the said plaintiffs further say, that afterwards, to wit, &c. the said cargo arrived in safety in the said vessel at Bilboa aforesaid, and was then and there delivered to the said persons so as aforesaid using the name, &c. and was by them sold and disposed of to divers persons to the said plaintiffs unknown, but that they did not, on the arrival of the said vessel at Bilboa, remit to the persons concerned in the residue of the said cargo seven shillings per quintal in bills of exchange payable in London, nor have they at any time remitted to the plaintiffs, or to either of them, the produce of the residue of the said cargo; but on the contrary thereof, have refused to remit the produce of the same, and of every part thereof, to the said plaintiffs, or either of them; whereof the said defendants afterwards, to wit, on, &c. had notice, to wit, at, &c.; and although the said defendants did afterwards, in part performance of their said promise and undertaking, accept certain

certain bills of exchange drawn on them by the said plaintiffs for the amount of the third part of the said cargo so as aforesaid consigned on account of the said persons so as aforesaid using, &c. : Yet the said defendants, not regarding their promise and undertaking, but contriving and intending to deceive and defraud the said plaintiffs in this respect, have not, nor hath either of them, reimbursed or paid the said plaintiffs the produce of the residue of the said cargo, although so to do the said defendants were by the said plaintiffs afterwards often requested ; but they to do the same have hitherto wholly refused, and still do refuse. And whereas the said defendants, first June 1786, at, &c. aforesaid, in consideration that the said plaintiffs, at the special instance and request of the said defendants, consigned from N. in North America to the said persons carrying on and using in trade, in parts beyond the seas, to wit, at Bilboa in the kingdom of Spain, the name, &c. a certain other cargo of fish, containing divers, to wit, four thousand and two quintals, of great value, to wit, of the value of four thousand pounds, one-third part thereof for and on account of the said *defendants*, one-fourth for and on account of the said Bidwell, and the residue thereof to be disposed of by the said persons so using the name, &c. for and on account of the said plaintiffs, they the said defendants undertook, and then and there faithfully promised the said plaintiffs, on the receipt of the bill of lading of the said last-mentioned cargo, to accept bills of exchange to be drawn on them by the said plaintiffs at forty days sight, to the amount of the third-part of the said cargo so as aforesaid consigned to the said persons so using the name, &c. for and on account of the said defendants ; and on the arrival of the vessel in which the said last-mentioned cargo had been shipped at B. that seven shillings per quintal should be remitted by the said persons so using the name, &c. to the persons concerned in the residue of the said cargo, in bills of exchange payable in London, and that the said defendants would be guarantees to the said plaintiffs for the said persons so using the name, &c. and see them reimbursed the produce of the said cargo : And the said plaintiffs further say, that afterwards, to wit, &c. the said cargo last-mentioned arrived in safety in the said vessel at B. aforesaid, and was then delivered to the said persons so using, &c. and by them sold and disposed of to divers persons to the said plaintiffs unknown ; but that they did not, on the arrival of the said vessel at B. remit to the persons concerned seven shillings per quintal in bills of exchange payable in L. nor have they at any time remitted to the said plaintiffs, or to either of them, the produce of the said residue of the said last-mentioned cargo ; but on the contrary thereof, have refused to remit the produce, and of every part thereof, to the said plaintiffs, or to either of them ; whereof the said defendants afterwards, on, &c. at, &c. had notice ; and although the said defendants did afterwards, in part performance of their said promise and undertaking last-mentioned, accept certain bills of exchange drawn on them by the said plaintiffs for the amount of the third part of the said cargo

2d Count, in consideration plaintiffs had consigned to correspondents one third on account of defendants, one fourth on account of Bidwell, and residue to be disposed of on account of plaintiffs.

3d Count, fish
consigned to
correspondents,
to be sold by
them on account
of plaintiffs.

so as aforesaid consigned on account of the said defendants: Yet the said defendants, not regarding their said promise and undertaking, and contriving and intending to deceive and defraud the said plaintiffs in this respect, have not, nor hath either of them, reimbursed or paid the said plaintiffs, or either of them, the produce of the said residue of the said cargo last-mentioned (although so to do, &c. often requested, &c.); but they to do the same have hitherto wholly refused, and still do refuse. And whereas the said defendants, on, &c. in consideration that the said plaintiffs had, at the like special instance and request of the said defendants, consigned from N. in North America to the said persons carrying on and using in trade, in parts beyond the seas, to wit, at B, in the kingdom of Spain, the name, &c. a certain large quantity of fish, containing divers, to wit, four thousand and twelve quintals, of great value, to wit, of the value of four thousand pounds, there to be by them sold and disposed of for and on account of the said plaintiffs, they the said defendants undertook, and then and there faithfully promised the said plaintiffs, to be guarantees to the said plaintiffs for the said persons so using the name, &c. and to see them the said defendants reimbursed the produce of the said last-mentioned fish: And the said plaintiffs further say, that on, &c. the said last-mentioned fish arrived in safety at B. aforesaid, and was then delivered to the said persons so as aforesaid using, &c. and was by them sold and disposed of to divers persons to the said plaintiffs unknown, but that they have not at any time since remitted to the said plaintiffs, or to either of them, the produce of the said last-mentioned fish, or in any manner satisfied or paid them for the same; but on the contrary thereof, have wholly refused so to do; whereof the said defendants, on, &c. had notice, to wit, at, &c. aforesaid: Yet the said defendants, not regarding their said last-mentioned promise and undertaking, but contriving and intending to deceive and defraud the said plaintiffs in this respect, have not, nor hath either of them, although often requested, reimbursed or paid the said plaintiffs the produce of the said last-mentioned fish; but to do the same they the said defendants have hitherto wholly refused, and still do refuse. And whereas the said defendants afterwards,

4th Count,
goods sold to
defendants, and
delivered by
plaintiffs to per-
sons carrying
on, &c. at de-
fendants re-
quest.

to wit, on, &c. were indebted to the said plaintiffs in other four thousand pounds, for divers other goods, &c. before that time sold to the said defendants, and delivered by the said plaintiffs to the said persons carrying on, &c. at the special instance and request of the said defendants; and being so indebted, they the said defendants, in consideration thereof, afterwards, &c. undertook, and then and there faithfully promised the said plaintiffs, to pay them the sum of money last mentioned, whenever afterwards they should be thereunto requested. And whereas afterwards, to wit, on the same day, &c. at, &c. in consideration that the said plaintiffs, at the like special instance and request, had before that time sold to the said defendants, and delivered to the said persons so using the name, &c. divers other goods, &c. they the said defendants un-

5th Count,
quantum meruit.

dertook,

dertook, and then and there faithfully promised the said plaintiffs, to pay them so much money as they therefore reasonably deserved to have: And plaintiffs aver, that they therefore reasonably deserve to have of the said defendants other four thousand pounds, to wit, at, &c. aforesaid; whereof the said defendants then and there had notice. (6th Count, money paid, laid out, and expended for the said defendants; breach to three last Counts; damages five thousand pounds; and therefore they bring their suit.)

S. LAWRENCE.

I think that Perez, Echalez, and Co. have not only undertaken to accept bills to the amount of one-third of the cargo, but also to guarantee the payment of the produce of the remainder from Bilbao. This the house in Spain not having remitted, an action may be maintained against Perez, Echalez, and Co. on their undertaking contained in their letters, and

the acceptance of the bills will be in no respect an obstacle to a recovery in such action, that being but a part performance of what they engaged to do. I think the quantity of fish being stated under a viz. not so material as to make it worth while to amend, if any great disadvantage will arise; if none will, it may be amended of course.

S. LAWRENCE.

LONDON, *ff.* Plaintiff complains against defendant, being, &c.: for that whereas the said plaintiff, at the time of making the charter-party of affreightment hereinafter mentioned, and also at the time of making the promise and undertaking of the said defendant hereinafter mentioned, *was master* of a certain ship or vessel hereinafter mentioned and described; and the said plaintiff being so master thereof, a certain charter-party of affreightment indented was made of the fifth of January 1769, at L. aforesaid, in the parish of, &c. between one Thomas Smeatham, as the owner of the said ship or vessel, of the one part, and one Charles Higgins of the other part; by which charter-party of affreightment the said Thomas Smeatham, for the considerations therein mentioned, did grant and let, and the said Charles Higgins did accordingly hire and take, the said ship to freight by the month, for the space of six calendar months certain, and for such further time as he might happen to be in performing a voyage with her to be made from L. to Madeira, and from thence to any port or ports in the West Indies and North America, with liberty in her way there to touch and stop at any port or ports, and from America back to Madeira, on the terms and conditions following; that is to say, first, that the said owner, for himself, his executors, and administrators, did covenant, promise, and agree to and with the said freighter, his executors, administrators, and assigns, by the said charter-party of affreightment, that the said ship should, at the proper costs and charges of the said owner, be then forthwith made tight, staunch, and strong, and well-manned, tackled, and provided with a sufficient number of hands and quantity of provisions for the same, and with all other necessaries, stores, and materials fit and proper for such a ship and her said intended employ, and so as to be fit and ready to be had by the eleventh day of the

On a promise to indemnify plaintiff, master of a ship, against any damages he might sustain in any action which might be brought by the owner for plaintiff's breaking his charter-party, in deviating out of his voyage.

said month of January in the year aforesaid, and to sail by the twentieth day of the same month, if required by the said freighter, and should prosecute and perform her said voyage to the several ports aforesaid (the dangers of the seas, and restraint of princes and rulers, always excepted), and, during such voyage, should load, unload, reload, and discharge all such lawful goods and merchandizes as should be thought fit; and that the master of the said ship for the time being should follow and perform all and singular the lawful orders and directions of the said freighter, his factors or assigns, or supercargo, which he should have liberty to put on board, in respect to the loading and unloading of the said ship, pursuant to the tenor, true intent, and meaning of the said charter-party of affreightment, &c. always; that the said ship should not be ordered to any port where she could not be lawfully admitted in consideration, nor should any contraband goods or passengers be put on board the said ship on the part and behalf of him the freighter, his supercargo, factor, or assigns; and that he the said freighter would, at his own expence, find and supply his said supercargo and passengers with provisions and other necessaries, and also bear and pay all such port-charges and pilotage as the same should grow due during the voyage above mentioned, save and except only the outward port-charges at London, which were thereby agreed to be paid by the said owner, and also should and would well and truly pay, or cause to be paid, to the said owner, his executors, administrators, and assigns, in full for the freight and hire of the said ship, and in lieu of all primage whatsoever, the full sum of fifty-five pounds of lawful money of Great Britain by the calendar month, for the space of six calendar months certain, although the said ship should sooner return to and be discharged at Madeira, and at the same rate for such longer time as the said ship should be taken up in performing the said voyage, the said monthly freight to commence from the said eleventh day of January in the year aforesaid, and to be paid in manner following, that is to say, as much monthly freight as the said ship should have earned, at the rate aforesaid, on her arrival at Madeira outwards, to be paid on such arrival by good bills of exchange on London at forty days sight, and such further monthly freight as the said ship should have carried on her arrival at Madeira, afterwards to be paid on such arrival by good bills of exchange on London, at forty days sight, and such further monthly freight as the said ship should have carried on her arrival in North America, to be paid on such arrival by good bills of exchange, and at forty days sight, and the remainder of the said monthly freight to be paid on the said ship's return to Madeira and the discharge of her cargo there, by good bills of exchange on London, at forty days sight: Provided always, that is the said ship should happen to be lost, or otherwise destroyed, then and if such case the said monthly freight, at the rate aforesaid, should be paid to the time of such loss, or to the time of her being known to be lost, in safety, as the same might happen, payable in one calendar month after an authentic account thereof received

Terms of the
charter-party of
affreightment.

ceived in London: Provided also, and it was further agreed, that the said freighter should have liberty, in case he should be so inclined, and give notice thereof to the master of the said ship within eight days after her return to Madeira, to keep and employ the said ship for six calendar months longer, for the same voyage, and at the like freight, terms, conditions, and provisos as were thereinbefore limited in respect of the employ above mentioned, any thing aforesaid to the contrary thereof notwithstanding; and to the performance thereof the said parties to the said charter-party of affreightment bound themselves, their executors and administrators, and the said owner of the said ship *her freight* and appurtenances, and the said freighter the respective charges on board *her*, the either to the other, in the penal sum of six hundred pounds sterling, as by the said charter-party of affreightment it may more fully appear: And the said plaintiff saith, that the said ship or vessel, in the said charter-party mentioned, afterwards, to wit, on the twenty-ninth day of January 1769, departed and set sail from the river Thames, and afterwards, to wit, on the twelfth day of March in the year aforesaid, arrived at Porto Riga Bay in the island of St Jago: And the said plaintiff further saith, that the said defendant afterwards, to wit, on the twenty-fourth of April in the year aforesaid, at L. aforesaid, and in consideration that the said plaintiff, at the special instance and request of the said defendant, would proceed with the said ship or vessel from Porto Riga Bay aforesaid to the coast of Brazil, undertook, and then and there, on the same day and year last aforesaid, at L. aforesaid, &c. faithfully promised the said plaintiff to indemnify him from any damage which he might sustain from his freighter or owner on account thereof: And the said plaintiff in fact saith, that he, relying on the said promise and undertaking of the said defendant, afterwards, to wit, on the same day and year last aforesaid, at the special instance and request of the said defendant, did proceed with the said ship or vessel from Porto Riga Bay aforesaid to the coast of Brazil aforesaid; and that the said Thomas Smeatham, party to the said charter-party, on account thereof afterwards, to wit, in Michaelmas term now last past, before our lord the king at Westminster, came, by Robert Champante his attorney, and brought into the court of our said lord the king then and there, his certain bill against him the said plaintiff, then being in the custody, &c. of a plea of trespass on the case, and found pledges to prosecute his said bill, to wit, John Doe and Richard Roe; and by his said bill he the said T. S. complained against the said plaintiff: for that whereas the said plaintiff, at the time of making the charter-party of affreightment thereafter mentioned, was master of a certain ship or vessel thereafter mentioned and described; and the said plaintiff being so master thereof, a certain charter-party of affreightment indented was made on the twenty-ninth of January 1769, at L. aforesaid, to wit, in the parish of, &c. between the said T. S. (by the name and description of, &c. owner of the said ship the brigantine called, &c. burthen one hundred and forty tons, or thereabouts,

Promise to indemnify.

Owner sued plaintiff by bill in B. R. for the deviation, whereby plaintiff lost freight, &c.

now in the river of Thames, whereof the said plaintiff is master, &c.) of the one part, and one Charles Higgins, by the name and description of C. H. of Madeira, merchant, now in L. of the other part (the other part of which charter-party, sealed with the seal of the said Charles Higgins, he the said Thomas Smeatham brought here into court, the date whereof was the same the day and year aforesaid); by which charter-party of affreightment it was witnessed, that the said T. S. for the considerations thereafter mentioned, had granted and let, and the said C. H. had accordingly hired and taken the said ship to freight by the month, for the space of six calendar months certain, of all and singular, &c.; of which said premises the said plaintiff afterwards, to wit, on the same day and year first in the same bill mentioned, at L. aforesaid, in the parish and ward aforesaid, had notice: And the said T. S. by his said bill averred, that the said ship or vessel mentioned in the said charter-party, being tight, staunch, and strong, and well-manned, tackled, and provided with a sufficient number of hands and quantity of provisions for the same, and with all other necessaries, stores, and materials fit and proper for such a ship and her said intended employ; and being laden, and fit and ready to sail on her said intended voyage, afterwards, to wit, the twenty-ninth of January 1769, departed and set sail from the river of Thames, and proceeded to Gravesend, and from thence to the Downs, and directly from thence towards Madeira, on her said voyage, according to the orders and directions of the said freighter by him in that behalf given to the said master, and afterwards, to wit, on the twentieth of February in the said A. D. 1769, arrived in safety at Madeira, and her homeward bound cargo, wherewith she was so laden as aforesaid, was there delivered according to the orders and directions of the said freighter; and the said ship being tight, staunch, strong, well-manned, tackled, and provided with all necessaries and stores for the voyage hereafter next mentioned, directly after the delivery of her said outward-bound cargo at Madeira aforesaid, another cargo, by the orders of the said freighter, was laden and put on board the said ship or vessel to be carried and conveyed in and on board the said ship or vessel from thence to Porto Riga Bay in the island of St. Jago; and afterwards, to wit, on the first of March in the said year 1769, the said ship being so tight, staunch, strong, well-manned, tackled, and provided with all necessaries and stores for the said voyage, departed and set sail from Madeira aforesaid with the said last-mentioned cargo, and directly proceeded from thence to Porto Riga Bay in the said island of St. Jago, and arrived there in safety afterwards, to wit, on the twelfth day of the same month of March in the year aforesaid: And the said T. S. further said, that the said plaintiff afterwards, to wit, on the same day and year last aforesaid, at Porto Riga Bay in the said island of St. Jago, had orders from the said freighter, with the said ship or vessel, to set sail from thence, and proceed directly to Philadelphia in North America; and although the said ship or vessel was then tight, staunch, and strong, and well-manned and tackled,

tackled, and provided with a sufficient number of hands and quantity of provisions for the same, and with all other necessary stores and materials fit and proper for such a ship to make the said last-mentioned voyage: Yet the said plaintiff, well knowing all and singular the premises in the same bill mentioned, but maliciously intending to injure the said T. S. and to prevent and hinder him from being entitled to and receive any freight under and by virtue of the said charter-party of affreightment, and to subject him and make him liable to an action for a breach of the covenants contained in the same charter-party, did not, with the said ship or vessel, set sail from the said P. R. Bay aforesaid in the said island of St. Jago, and proceed directly to Philadelphia aforesaid, according to the orders to him in that respect given as aforesaid; but on the contrary, sailed and proceeded in the said ship or vessel from P. R. Bay aforesaid to Rio Janeiro on the coast of Brazil, and continued there for a long space of time, to wit, five months; by reason whereof the said T. S. not only lost the freight of the said ship or vessel, but was also obliged to pay and expend a large sum of money by reason of the aforesaid directions, to wit, the sum of two hundred pounds, that is to say, at L. aforesaid, in the parish, &c. whereof the said T. S. said he was injured, and did suffer damage to the value of one thousand pounds; and therefore he brought suit, &c.: *And such proceedings were thereupon had in the said court of our said lord the king, before the king himself, at Westminster aforesaid, upon the same bill, that afterwards, to wit, in the same term of St. Michael, the said T. S. by the consideration of the same court, recovered against the said plaintiff seven hundred and fifty-one pounds ten shillings by the same court of our said lord the king, before the king himself, adjudged to the said T. S. for his damages which he had sustained, as well by occasion of the said trespass upon the case by the said plaintiff to the said T. S. done, as for his costs and charges by him about his suit in that behalf expended, whereof the said plaintiff is convicted, as by the record thereof, remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, more fully appears: And the said plaintiff further says, that he the said plaintiff was obliged to lay out and expend, and did lay out and expend, a large sum of money, to wit, the sum of two hundred pounds of lawful money, &c. in and about his defence against the said bill of the said T. S. to wit, at L. aforesaid, in the parish and ward aforesaid: And so the said plaintiff in fact saith, that he the said plaintiff, on account of his proceeding with the said ship or vessel from Porto Riga Bay aforesaid to the said coast of Brazil as aforesaid, hath sustained damage to a large amount, to wit, to the amount of one thousand pounds, that is to say, at L. aforesaid, in the parish and ward aforesaid; of all which premises the said defendant afterwards, to wit, on the first of January 1774, at L. aforesaid, &c. had notice: Nevertheless the said defendant, not at all regarding his said promise and undertaking in form aforesaid made, but contriving and fraudulently intending to deceive and defraud the said plaintiff*

Breach that defendant had not in any manner indemnified.

Plaintiff let judgment go by default.

Prout patet.

in this behalf, hath not paid him the said sum of one thousand pounds, or any part thereof, or in any manner indemnified him the said plaintiff from the damage which he hath sustained on account of his proceeding with the said ship or vessel from P. R. Bay aforesaid to the said coast of Brazil as aforesaid, although the said defendant afterwards, to wit, on the same day and year last aforesaid, and often since, at L. aforesaid, in the parish and ward aforesaid, hath been requested by the said plaintiff so to do; but so to do the said defendant hath hitherto altogether refused, and still doth refuse. And whereas also afterwards, to wit, on the same day and year last aforesaid, &c. (Two Counts more, one thousand pounds each; money had and received, and paid, laid out, and expended; breach, two last Counts; and damages one thousand pounds.)

F. BULLER.

A Count, in consideration that plaintiffs had made and given their note to defendants, they promised to provide money for the payment of it when it became due. Note was negotiated, but defendants did not provide, &c. for the payment of it, *per quod* plaintiff obliged to pay, &c.

FOR that whereas heretofore, to wit, on the twenty-fourth day of October 1782, at London, &c. in consideration that the said plaintiffs, at the special instance and request of the said defendant, and for the purpose of the same being negotiated, had made and given their certain promissory note, bearing date the twenty-eighth of September 1782 aforesaid, for the sum of two hundred and fifty-one pounds two shillings, payable to the said defendant and one Rachel Phipps, by the name, style, and firm of Mrs. Rachel Phipps and Son, or order, at two months after the date of the said note, as for value received, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to provide money for the said note when it should become due and payable: And the said plaintiffs in fact say, that although the said note, so by them made and given as aforesaid, was, after the making of the said promise and undertaking of the said defendant, indorsed over and negotiated by him the said defendant and the aforesaid Rachel Phipps; and although the said note did afterwards, to wit, on the first day of December in the year 1782 aforesaid, become due and payable to the then holder and indorsee thereof, to wit, at London, &c. aforesaid; whereof the said defendant had notice, to wit, at London, &c. aforesaid: Yet the said plaintiffs in fact further say, that the said defendant, not regarding, &c. but contriving, &c. to deceive and defraud the said plaintiffs in this behalf, did not, when the said note so became due and payable as aforesaid, or at any other time whatsoever, provide money for the same, or take up or discharge the said note (although he the said defendant was frequently requested so to do by the said plaintiffs, to wit, at, &c. aforesaid); but wholly refused and neglected so to do, and therein wholly failed and made default, contrary to the tenor and effect of his aforesaid promise and undertaking, and in breach and violation thereof, whereby the said plaintiffs were afterwards forced and obliged to take up, and to pay and satisfy the said note, and the money therein specified, out of their own proper

proper money, to wit, at, &c. aforesaid. (Money laid out, &c.; ditto lent, &c.; ditto had and received, &c.; account stated; and common conclusion to the four last Counts.)

MIDDLESEX, *ss.* James Cooper complains of William Clipson, being in the custody, &c. in a plea of trespass on the case, &c.: for that whereas, on the fifth day of February A. D. 1780, to wit, at Westminster in the county of Middlesex aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, would join with one William Cooper in the making of a certain promissory note in writing, to bear date the said fifth of February in the year 1789 aforesaid, whereby they the said plaintiff and William Cooper should jointly and separately promise to pay to the said defendant, or order, at six months after the date of the said note, twenty-five pounds, as for value received by them the said plaintiff and W. C. and would then and there deliver such note to him the said defendant, in order that he might negotiate the same, and by that means raise money thereon for his own sole use and benefit, he the said defendant undertook, and faithfully promised the said plaintiff, to save harmless and indemnify him the said plaintiff from all costs, charges, or damages which he might or should be put unto on account of his making the said promissory note; and also that he the said defendant would provide for and take up the said note when it should become due: And the said plaintiff in fact further saith, that he, confiding in the said promise and undertaking of the said defendant, so by him in manner and form aforesaid made, did, after the making thereof, to wit, on the said fifth day of the said month of February in the year 1780 aforesaid, to wit, at Westminster aforesaid, at the said special instance and request of the said defendant, and for his accommodation, join the aforesaid W. C. in the making of, and did then and there with him the said W. C. make a promissory note in writing, bearing date the said fifth day of February in the year 1780 aforesaid, whereby they the said plaintiff and W. C. jointly and separately promised to pay to the said defendant, or order, at six months after date of the said note, twenty-five pounds, as for value received by them the said plaintiff and W. C. and did then and there deliver the said promissory note to him the said defendant for the purpose aforesaid: And the said plaintiff further saith, that after the making of the aforesaid promissory note, to wit, on the day and year aforesaid, at Westminster aforesaid, the said defendant, to whom or to whose order the same was payable as aforesaid, negotiated the said note for the purpose aforesaid, by then and there indorsing the same over to, and appointing the money therein specified to be paid to one Christopher Walbank, and then and there deliver the said note, so indorsed as aforesaid, to the said Christopher Walbank: And the said plaintiff in fact further saith, that the said defendant not having taken up the said note, according to the tenor of the aforesaid promise and

Declaration on the special *assumpsit*, in consideration that plaintiff would join with one, &c. in making a promissory note, payable to defendant for his accommodation, he undertook to indemnify plaintiff, and to provide for and take up the note. Plaintiff accordingly joined in the note; defendant negotiated it, but did not take it up when due; indorsee brought an action thereon against plaintiff, whereby he was obliged to pay, &c. yet defendant hath not indemnified him, &c.

undertaking, the same was afterwards, and at the end and expiration of the said six months therein mentioned, and thereby appointed for the payment of the money therein specified, shewn and presented to him the said plaintiff for payment of the money therein specified, according to the tenor and effect of the said note and the said indorsement so thereon made as aforesaid: And the said plaintiff in fact further saith, that the said defendant not having provided the said plaintiff with money to discharge the said note as aforesaid, he the said plaintiff was unable to pay the same: whereupon the said Christopher Walbank, for the recovery of the said sum of money in the said note specified, afterwards, to wit, on the tenth day of August in the year 1780 aforesaid, commenced and prosecuted a certain action or suit in the court of our said lord the now king, before the king himself, against the said plaintiff, whereby he the said plaintiff was not only forced and obliged to, and did afterwards, to wit, on the day of in the year aforesaid, at, &c. aforesaid, pay to the said Christopher Walbank the said sum of twenty-five pounds in the said note specified, but also a large sum, to wit, the sum of pounds, for the costs and charges as well of the said Christopher Walbank in the prosecution of the said suit as of him the said plaintiff in the defence thereof, and by means thereof sustained a damage, on occasion of his having joined with the said W. C. in the making of the said promissory note, to a large amount, to wit, to the amount of pounds of lawful, &c.; whereof the said defendant afterwards, to wit, on the first of January 1781, at, &c. aforesaid, had notice: Yet the said plaintiff in fact further saith, that the said defendant, not regarding, &c. but contriving, &c. hath not as yet in any manner whatsoever indemnified him the said plaintiff from and against the said damage so by him sustained on occasion of, &c. as aforesaid, or in any manner recompensed him for or made good that sum (although to perform, &c.); but he so to do hath altogether refused and neglected, and still refuses so to do.

MIDDLESEX. *J.* Solomon Schombrez, late of, &c. was attached to answer Andrew Lacom and Edward Carter in a plea of trespass on the case, &c.; and thereupon the said plaintiffs, by J. E. their attorney, complain: that whereas he the said defendant, on the ninth day of November A. D. 1756, at Westminster, in the county of Middlesex, made a certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of; and the said bill, bearing date the day and year aforesaid, then and there directed to the said plaintiffs, by the names, &c. of, &c. and thereby required the said plaintiffs, at two months date, to pay to James Rous, or order, the sum of fifty pounds, as for value of him the said James received, and to place it to the account of the said defendant; and the said E. Carter afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in the county aforesaid, for himself and the said Andrew, at the special instance

On promise of indemnity, not indemnifying plaintiffs, who accepted a bill of exchange drawn by defendant, which he promised to pay when due, but did not, and plaintiffs were forced to pay it, together with costs on a judgment obtained against them thereon.

instance and request of the said defendant, accepted the said bill; and in consideration of the premises, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that he the said defendant would pay the said bill when it became due and payable, and to hold them the said plaintiffs indemnified therefrom: And the said plaintiffs in fact say, that the said bill afterwards, to wit, on the twelfth day of November in the year of Our Lord aforesaid, at W. aforesaid, became due and payable; whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. did not, when the said bill became due and payable as aforesaid, or at any other time whatsoever, pay the same, or the said sum of money therein mentioned, or any part thereof, or in any manner whatsoever indemnify, or keep or hold indemnified, the said plaintiffs of, from, or against the said bill, according to the said promise and undertaking of the said defendant, but therein wholly failed and made default; and thereupon the said plaintiffs, for their discharge of and from the said bill, and from a judgment at law thereupon recovered against them by the said James Rous, afterwards, to wit, on the eighth day of April 1757, at Westminster aforesaid, was forced and compelled to pay and satisfy the said sum of fifty pounds to the said J. Rous, and a large sum of money, to wit, the sum of fifteen pounds, for costs of suit, to wit, at W. aforesaid. (Several common Counts for other money owing from defendant to plaintiffs.)

Drawn by MR. WARREN.

MIDDLESEX, ff. James Johnston, late of, &c. was attached, to answer Richard Smithson in a plea of trespass on the case, &c.; and thereupon, &c. complains: that whereas he the said R. S. heretofore, that is to say, in Michaelmas term in the twenty-eighth year of the reign of our lord the now king, at the special instance and request of the said defendant, before Sir John Willes, knight, and his companions, then his majesty's justices of the bench here, to wit, at Westminster in the county of Middlesex, came into his majesty's court here, in his proper person, and then and there, in the same court here, acknowledged himself to owe to M. F. widow, and C. F. the sum of one hundred and eighty pounds eight shillings and eightpence; which said sum of, &c. he the said plaintiff, for himself and his heirs, willed and granted to be made of his lands and chattels, to be levied to the use and behoof of the said M. F. widow, and C. F. upon condition, that if judgment should happen to be given in the said court here for the said M. and C. against the said J. J. in a certain plea of trespass on the case to the damage of the said M. and C. of one hundred and ninety pounds, prosecuted by the said M. and C. against the said J. in the said court here, then the said J. should satisfy all the damages which should be adjudged to the said M. and C. in the said court here against the said J. in the plea aforesaid, or should render his body on that occasion to the prison of the Fleet, as by the said record of the said recognizance, remaining in the said court of the bench here, at Westminster aforesaid, more fully appears;

Declaration, special assumpsit, not indemnifying plaintiff, who had become bail, but suffering him to be sued by a scire facies.

peers; and in consideration thereof, he the said J. J. afterwards, to wit, on the first of December 1754, at Westminster aforesaid, in the said county of Middlesex, undertook, and then and there faithfully promised the said plaintiff, to indemnify and keep harmless him the said plaintiff of and from the said recognizance: And the said plaintiff avers, that afterwards, to wit, in the term of St. Hilary, in the twenty-eighth year, &c. judgment, in the said plea of trespass on the case was given in and by this court here for the said M. F. and C. F.; and the said M. F. and C. F. then and there, in the said term of St. Hilary, in the twenty-eighth year aforesaid, in the said court of the bench here, by the consideration of the said court, recovered against the said J. J. in the aforesaid plea one hundred and two pounds ten shillings, which were adjudged to the said M. and C. in the said court here for their damages which they had sustained by reason of the not performing of certain promises and undertakings made by the said J. to the said M. and C. whereof the said J. was convicted, as by the said record and proceedings thereof in the said court here remaining, at Westminster aforesaid, plainly appears; of which judgment, so recovered in form aforesaid, he the said defendant afterwards, to wit, on the fourteenth of February in the twenty-eighth year aforesaid, at Westminster aforesaid, had notice: Yet the said defendant, not regarding, &c. but contriving, &c. hath not indemnified or kept harmless him the said plaintiff of and from the said recognizance, by satisfying the said damages so adjudged to the said M. and C. in the said court here against the said J. as aforesaid, in the plea aforesaid, or by rendering his body on that occasion to the said prison of the Fleet, according to the form and effect of the said recognizance, or in any other manner whatsoever (although the said defendant afterwards, to wit, on the same day and year aforesaid, and often afterwards, to wit, at Westminster aforesaid, was requested by the said plaintiff so to do); but he the said J. so to do hath altogether refused: and thereupon the said plaintiff afterwards, to wit, on the said day of March A. D. 1756, at Westminster aforesaid in the said county of Middlesex, to discharge himself of and from the said recognizance, and of and from an adjudication of execution adjudged by the said court of the bench here against the said plaintiff of the said one hundred and eighty pounds eight shillings and eightpence, by him the said plaintiff in form aforesaid acknowledged, by virtue of his majesty's writ of *scire facias* before then sued and prosecuted in the said court of the bench here by the said M. F. and C. F. against the said plaintiff upon the said recognizance, and of and from his majesty's writ of *scire facias* sued out of the said court here against the lands and chattels of the said plaintiff upon the said adjudication, was forced to pay, and did pay, to W. B. esquire, and J. W. esquire, then and still being sheriff of the said county of Middlesex, to the use of the said M. F. and C. F. a large sum of money, to wit, the sum of one hundred and twenty pounds, and also to lay out and expend,

and

and did lay out and expend, in his the said plaintiff's defence in that behalf, a large sum of money, to wit, the sum of twenty pounds, and was otherwise put to great trouble and anxiety of mind in the premises, to wit, at Westminster aforesaid in the said county of Middlesex. And whereas, &c. (A Count for one hundred and fifty pounds; for money laid out; and common conclusion to that Count.)

MIDDLESEX, *ff.* Robert Fletcher against John Fletcher: Declaration *on special assumpsit*, for not indemnifying plaintiff against a joint note. for that whereas the said R. and J. on the fourth of February A. D. 1752, at Westminster in the county of M. aforesaid, at the special instance and request of the said J. and for the proper debt of the said J. had made their certain note in writing, commonly called a promissory note, subscribed with their own hands, bearing date the same day and year, and then and there delivered that note to Sir R. L. knight; and by that note they the said R. and J. jointly and separately promised to pay to Sir R. L. or order, three months after date, twenty pounds value received; and by reason thereof, and according to the form and effect of the statute in such case made and provided, they the said R. and J. became jointly and separately liable to pay to the said Sir R. L. the said sum of money contained in the said note, according to the tenor and effect of the said note; and being so liable, they the said R. and J. at the like instance of the said J. and for the proper debt of the said J. afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said Sir R. L. to pay to him the said sum of money in the said note contained, according to the tenor and effect of that note: and thereupon the said J. in consideration of the premises, afterwards, to wit, on the same day and year aforesaid, at, &c. aforesaid, undertook, and then and there faithfully promised the said R. to indemnify him the said R. from the said note and his promise aforesaid: Yet the said defendant, not regarding, &c. but contriving, &c. hath not indemnified or kept the said R. indemnified (although often requested), of and from the said note; but the said sum of money contained in the said note not being paid or satisfied to the said Sir R. L. according to the tenor and effect of the said note, he the said R. afterwards, to wit, on the tenth of May A. D. 1754, at W. aforesaid, for his discharge of and from the said note, and to prevent his being sued at law thereon, was forced and compelled to pay and satisfy to the said Sir R. L. the said twenty pounds, to wit, at Westminster aforesaid; whereof the said defendant then and there had notice. (Money laid out.)

MIDDLESEX, *ff.* William Benton complains of John Cunningham, being, &c.: for that whereas said plaintiff heretofore, In consideration plaintiff (a sheriff's officer) would discharge one D. S. out of his custody, defendant promised to put in bail on return of writ, but did not; whereby plaintiff was obliged to pay debt and costs.

to wit, on, &c. and from thence until and at and after the making of the promise and undertaking of said defendant hereafter next mentioned, was an officer of or belonging unto Henry Boulton, esquire, then sheriff of the county of Surrey, and being such officer had arrested one Daniel Simson under and by virtue of a certain warrant for that purpose from the said sheriff of the said county of Surrey, upon a certain writ of our said lord the now king called a latitat, before then issued out of the court of our said lord the king, before the king himself, against the said D. S. at the suit of one Isaac Bates, returnable on Wednesday, &c. directed to the said sheriff of the said county of Surrey, and duly indorsed and marked for bail for thirty-two pounds, to wit, at, &c. in, &c.; and said D. S. was then and there in the custody of said plaintiff, as such officer of the said sheriff of the said county of S. under such

(1) "last mentioned"

(2) "said last-mentioned"

(3) "last mentioned"

(4) "and in custody as last"

(1) arrest as aforesaid, and for want of bail to the (2) *aforesaid* writ of latitat: And the said D. S. being so in custody as aforesaid, whilst he was so in custody, to wit, on, &c. in consideration that said plaintiff, at the special instance and request of the said defendant, would suffer and permit the said D. S. to go at large from and out of the custody of the said plaintiff, and would release and discharge him the said D. S. from the said (3) arrest, he the said defendant undertook, and then and there faithfully promised the said plaintiff, that he the said defendant would put in bail for the said D. S. in the said action or suit so commenced by the said I. B. against the said D. S. as aforesaid, on or before the return of the said warrant under and by virtue of which the said D. S. had been and was so arrested (4) *as aforesaid*, being the return day of said writ of latitat, *and perfect the same, and on neglecting so to do would pay the debt for which said action was commenced, together with the costs of the said suit, to plaintiff, so being such officer as aforesaid*: And the said plaintiff in fact says, that he, confiding in the said promise and undertaking of the said defendant, so by him made as aforesaid, did, after the making thereof, to wit, on, &c. suffer and permit the said D. S. to go at large from and out of the custody of him the said plaintiff, and did release and discharge the said D. S. from the aforesaid arrest; whereof the said defendant afterwards, to wit, on, &c. had notice: Yet the said defendant did not, nor did the said D. S. at any time before the return of the said warrant, or before or on the return-day of the said writ of latitat, put in bail for him the said D. S. in the said action or suit in which he was so arrested as aforesaid, and perfect the same, according to the tenor and effect of his aforesaid promise and undertaking, but neglected so to do; whereby and in consequence thereof, and of no bail being perfected in the said action or suit within due time, and according to the rules and practice of the said court of our said lord the king, before the king himself, the said plaintiff was afterwards, and after the return of the said warrant and of the said writ of latitat, to wit, on, &c. at, &c. was forced and obliged to, and did, pay a large sum of money, to wit, the sum of forty-two pounds eleven shillings, being for and on account

count of the debt and costs in and of the aforesaid action or suit ; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice ; and thereby, and by reason thereof, and of the aforesaid promise and undertaking of said defendant, he the said defendant became liable to reimburse and pay him the said plaintiff the said sum of forty-two pounds eleven shillings, so by him paid for the said debt and costs in the said action or suit as aforesaid, when he should be thereto afterwards requested. And whereas the said plaintiff being such officer as aforesaid, he the said plaintiff, before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. had arrested the aforesaid D. S. under and by virtue of a certain other warrant, &c. &c. (Go on as in the 1st Count, omitting what is in *Italic* and inserting what is in the margin, till you come to this mark +, then proceed as follows) : Yet the said defendant, not regarding his said promise and undertaking so by him made as last aforesaid, but contriving, &c. to deceive and defraud said plaintiff in this behalf, did not in due, or within, or at any time whatsoever, put in and perfect bail, nor did said D. S. put in and perfect bail in the said action or suit so commenced by the said I. B. against the said D. S. as aforesaid, for him the said D. S. (although to perform his promise and undertaking, in that respect made as aforesaid, the said defendant was requested by the said plaintiff afterwards, and before the return of the said writ of latitat, to wit, at, &c.) but refused and neglected so to do, and therein wholly failed and made default, contrary to the tenor and effect of the said last-mentioned promise and undertaking of the said defendant ; whereby, and by means of which said several premises, and in consequence of bail not being perfected for the said D. S. in the said last-mentioned action or suit against him the said D. S. within due time, and according to the course and practice of the said court of our said lord the king, before the king himself, he the said plaintiff was afterwards, and after the return of the said writ of latitat, and before the exhibiting, to wit, on, &c. forced and obliged to pay a large sum of money, to wit, the sum of forty-two pounds, for and on the account of the costs of the said sheriff of the said county of S. being attached for not bringing into the said court of our said lord the king, before the king himself, the body of the said D. S. pursuant to a rule of the said court upon him the said sheriff, in consequence of his return of the said last-mentioned writ of latitat, and of his having so taken the said D. S. upon the same as aforesaid, to wit, at, &c. And whereas, &c. (money laid out, &c.). And whereas, &c. (money had, &c.): Yet the said defendant, &c. (Common conclusion as to those Counts. Damages one hundred pounds.)

2d Count.

3d Count.

It is not improbable but that the considerations set forth in the special Counts of this declaration will be objected to ; it will therefore be advisable to re-con-

sider the case before plaintiff proceeds to trial.

V. LAWES.

It is now determined that this action will not lie. Hil. 37. Geo. 3.

LONDON,

Declaration, plaintiff being co-executor, and in fact the only assignee, of the will of H. B. had according to several devises administered assets, and placed the same out in government securities; defendant on behalf of several remainder men applied to the plaintiff for to transfer, and plaintiff for an indemnification, as well of himself as the other executors, caused a letter of attorney, release, and bond of indemnity to be drawn, but refused to execute or assign; unless defendant would pay for drawing the letter of attorney, &c. in consideration thereof plaintiff would assign, defendant undertook to pay, &c. but did not.

LONDON, to wit. William Light complains of John Stoke, being, &c. : for that whereas, before the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. one H. B. then of London, warehouseman, but now deceased, duly made his last will and testament in writing, and thereby, amongst other things, devised to T. T. J. C. and the said W. L. and to the survivor of them, and the executors or administrators of such survivor of them, the sum of one thousand pounds, upon trust to put the same out at interest upon government and other good security, and to pay the interest arising therefrom quarterly, to and for the only proper use and benefit of his daughter Hannah, then the wife of T. M. during her natural life, &c. &c. (set out the will); and afterwards, and before the making of the said promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at, &c. the said H. B. died; after whose death, and before the making of the promise and undertaking of the said defendant hereafter next mentioned, the said J. T. and W. L. at, &c. duly proved the said will, and took upon themselves the burthen of the execution thereof; and the said W. L. being the sole acting executor of the said will, he the said W. L. before the making of the promise and undertaking of the said defendant hereafter mentioned, had gotten in, collected, and received certain assets of the said testator, arising from the said personal estate and effects of the said testator, and had laid out and expended the same, in the name of the said W. L. in the purchase of two thousand five hundred pounds, in a certain government security, and commonly called the Old South Sea annuities, and the same two thousand five hundred pounds annuities were standing in the name of the said W. L. at the time of the making of the said promise and undertaking of the said defendant hereafter next mentioned; and the said M. B. the testator's late wife, and the said Hannah, and the said R. B. before and at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, were dead, and the said Hannah had died without leaving any issue; whereby J. B. the only son of R. B. named in the said will, J. S. who had married Sarah the daughter of the said R. B. in right of the said Sarah, R. R. who had married Alice another daughter of the said R. B. in right of the said Alice, became, and at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, were severally entitled to the said two thousand five hundred pounds South Sea annuities, and all other the said testator's personal estates then unadministered; of all which premises the said defendant afterwards, to wit, on, &c. and before the making of the promise and undertaking of the said defendant hereafter next mentioned, at, &c. in, &c. had notice: and afterwards, to wit, on, &c. at, &c. application was made by the said defendant on behalf of the said several persons so entitled to the said annuities, and other the said testator's personal estates and effects so unadministered, and as their agent, to transfer to him for their use the said two thousand five hundred pounds South Sea annuities, and to deliver over to him, for them and

as their agent, certain other assets of the said testator then unadministered, all which the said W. L. was then and there ready and willing so to do, upon his and the said other executors then being properly, honestly, and fairly discharged and indemnified in the premises: and thereupon, for their proper, fair, and honest discharge and indemnification in the premises, he the said W. L. so being the sole acting executor of the said will, afterwards, and before the making of the said promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. at the instance of the said J. S. to wit, on, &c. had, by one A. B. gent. one of the attornies of this court here, prepared, at his the said J. L.'s own costs, three certain deeds, writings, or instructions, to wit, one deed or writing purporting to be a letter of attorney, bearing date on, &c. from the said J. B. J. S. and Sarah his wife, &c. &c. the persons so entitled to the said annuities and other the personal estates of the said testator then unadministered, to empower the said defendant, for them and every of them, in their and each and every of their names, place, and stead, and for their and each and every of their use, to ask for, sue, levy, recover, and receive all and all manner of debts, dues, rents, sum, and sums of money then due by the said recited will, or thereafter to be due or payable by the said will, or otherwise, unto them, any, or each of them, by or from the said T. T. J. C. and W. L. or any of them, or by or from any other person or persons whatsoever, and upon the receipt thereof, in their, each, or any of their name or names, to make and give acquittance, or other discharges for the same; one other deed, writing, or instrument, bearing date on, &c. purporting to be a release from the said J. B. &c. &c. &c. and thereby it was alledged that the several persons last above mentioned, as for and in consideration of the said two thousand five hundred pounds South Sea annuities by the said deed or instrument alledged to have been transferred by the said W. L. to the said J. S. the now defendant, therein described by the name of, &c. for their use, and as if the same had been really transferred as aforesaid to the said T. T. J. C. and W. L. and every of them, their and every of their heirs, executors, or administrators, of and from all right, claim, challenge, or demand of all reckonings and accounts, sum and sums of money, by them, or any of them, had or received in pursuance of the said in part-recited will, or otherwise, of the estate and effects of the said H. B. deceased, and which they the said parties, so releasing as aforesaid, then were entitled to in their own right, or in the right of their wives; and also of and from all other reckonings, accounts, and demands whatsoever, save and except such sums of money of the said H. B. deceased as should or might at any time thereafter come to the hands, custody, or possession of the said T. T. J. C. and W. L. or any or either of them; and the other of the said deeds or writings, purporting to be a bond from the said several persons, who were so by the said writing or release alledged to have released to the said executors as aforesaid in the penalty of two thousand pounds, bearing date on, &c. to the said T. T. J. C. and W. L.

with

with a condition thereto subscribed for the indemnifying and saving harmless the said T. T. J. C. and W. L. each and every of them, their, each, and every of their heirs, executors, or administrators, of and from all charges and demands whatsoever which any person or persons might have or lay claim to the personal estate and effects of the said H. B. or any part thereof, and also for the indemnifying and saving harmless the said T. T. J. C. and W. L. their and each of their executors, administrators, or assigns, of and from all such sum and sums of money and other effects of the said H. B. deceased, that they or either of them should in any wise pay or deliver over to the said defendant, or their attorney constituted for that purpose, of and from all and every person or persons claiming, or to claim, any part thereof, and of and from all costs, charges, damages, and expences which they, or any, or either of them should or might suffer and sustain, or be put to on that account; and the said W. L. had also, before the making of the promise and undertaking of the said defendant hereafter next mentioned by the said A. B. been at a very great expence in getting the said three deeds executed by the said several parties therein named, as parties executing or to execute the same, or in other affairs relating to the said executorship, and was thereby then and there indebted to the said A. B. in a large sum of money, to wit, in the sum of pounds; of all which said premises the said defendant afterwards, to wit, on, &c. and after the said three deeds had been so executed, at, &c. had notice, and then and there requested the said W. L. to transfer the said two thousand five hundred pounds South Sea annuities to the said defendant, and to deliver to him the said other assets of the said testator then unadministered, to and for the use of the said parties so entitled to the same in pursuance of the said letter of attorney; but the said W. L. then and there refused so to do, unless the said money so due and owing to the said A. B. was first paid and satisfied, as he lawfully might; of all which premises the said defendant then and there also had notice: and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, would transfer the said two thousand five hundred pounds South Sea annuities to him the said defendant, and deliver to him the said other assets then unadministered, to and for the use of the said parties so entitled to the same in pursuance of the said letter of attorney, he the said J. S. undertook, &c. said W. L. to pay off and discharge the said debt so due and owing from the said W. L. to the said A. B.: And the said plaintiff avers, that, confiding in the said promise and undertaking of the said defendant, he the said plaintiff, at the request of the said defendant, afterwards, to wit, on, &c. did transfer the said two thousand five hundred pounds South Sea annuities to the said J. S. and deliver to him the said other assets of the said testator then unadministered, to and for the use of the said parties so entitled to the same in pursuance of the said letter of attorney; and the said J. S. then and there received the same: Yet the said defendant, not regarding, &c. but contriving, &c. said plaintiff in this behalf, hath not paid or discharged the said debt so at the time of the making of, &c. due and

and owing from the said plaintiff to the said A. B. or any part thereof, although, &c. ; but he to do this bath, &c. ; whereby, for and in default of the said defendant in non performing his promise and undertaking, he the said plaintiff afterwards, to wit, on, &c. was obliged to pay off and discharge the said debt to the said A. B. ; and whereof the said defendant afterwards had notice. (*Indebitatus assumpsit* and *quantum meruit* for work and labour ; money laid out, &c. ; and common conclusion.)

Drawn by MR. WARREN.

FOR that whereas the said defendants heretofore, to wit, on, &c. at, &c. had been and were sued and were arrested at the suit of one A. B. in a certain action or suit thenceforth brought against them by the said A. B. in the court of our lord the king, before the king himself, for a certain debt then and there due and owing from them the said defendants to the said A. B. ; and thereupon afterwards, and whilst the said action or suit was depending, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of said defendant, would become bail for them the said defendants in the said court of our said lord the king, before the king himself, in the said action or suit, they the said defendants undertook, and then and there faithfully promised the said plaintiff, that they the said defendants would indemnify and bear him said plaintiff harmless against all costs, charges, and other expences on account of his so becoming bail for the said defendants : And said plaintiff in fact says, that he, confiding in the said promise and undertaking of said defendants, did, after the making thereof, to wit, on, &c. at, &c. become and was then and there bail for said defendants in the said court, in the said action so brought against them by the said A. B. as aforesaid ; and although the said A. B. afterwards, to wit, in Easter term in the twenty-eighth year of the reign of our lord the now king, recovered and obtained judgment against said defendants in the said court of our said lord the king, before the king himself, in the aforesaid action or suit, for a certain large sum of money, to wit, the sum of pounds ; whereby, and in consequence of which said judgment, and of the same being unsatisfied, he the said plaintiff, in order to prevent his goods and chattels from being taken in execution upon the said judgment so obtained by the said A. B. as aforesaid, to wit, on, &c. at, &c. was forced and obliged, and did then and there pay a certain large sum of money, to wit, the sum of pounds, for and on account of the said judgment so recovered as aforesaid, and of the execution thereof ; and thereby, and by reason of which said several premises, he the said plaintiff was damaged, and did then and there sustain costs, charges, and other expences on account of his becoming, and of his having become, such bail as aforesaid for the said defendants, to a large amount, to wit, to the amount of pounds, the amount of the money so by him paid as aforesaid ; whereof the said defendants afterwards, to wit, on, &c. at, &c. had notice, and were required to indemnify plaintiff for the same, according to the tenor and effect of the said promise and

Declaration, in consideration that defendants had been arrested and sued by one A. B. they undertook to indemnify the plaintiff in any costs arising from his becoming bail for them, but defendants failed so to do, whereby plaintiff was greatly damaged.

undertaking of said defendants in that behalf: Yet said defendants, not regarding, &c. but contriving, &c. have not, nor hath either of them, in any manner whatsoever indemnified or borne the said plaintiff harmless from or in respect of the said costs, &c. so by him sustained on account of his having become such bail for the said defendants in the said action or suit so brought against them as aforesaid, nor reimbursed him the same, or any part thereof; but they so to do have hitherto refused and neglected, and still refuses, contrary to the tenor and effect of their said promise and undertaking, and in breach and violation thereof, to wit, at, &c.
(Add the common Counts.) V. LAWES.

Declaration against defendant, for not indemnifying plaintiff according to his promise if he would become co-assignee with him under a commission of bankrupt against one J. L.; plaintiff became co-assignee, and was put to great expences in defending two actions which were brought against them as such co-assignees; defendant refused to repay plaintiff the money he had laid out.

LONDON, *ss.* Stephen Flindall against John Lee: for that whereas heretofore, to wit, on, &c. in consideration that the said Stephen, at the special instance and request of the said John, would become co-assignee with him the said John, under a certain commission of bankrupt before then awarded and issued against one John Lane, and then in full force, he the said John undertook, &c. the said Stephen to indemnify and bear harmless him the said Stephen from all costs, charges, and expences on account of his becoming such co-assignee as aforesaid: And the said Stephen in fact saith, that he, confiding in the said promise and undertaking of the said John, did, after the making thereof, to wit, on, &c. become co-assignee with him the said John, under the said commission of bankrupt against the said J. L. and that, having so become such co-assignee with the said John under the said commission, certain actions or suits at law, that is to say, a certain action at the suit of one — Hills, and a certain action at the suit of one — Nixon, were afterwards, and before the exhibiting of the bill of the said Stephen against the said John, and without the default of him the said Stephen, brought, commenced, and prosecuted against them the said Stephen and John in the court of our lord the king in the court at Westminster, for and on account of certain debts and demands upon them the said Stephen and John, as such assignees under the said commission of bankrupt against the said J. L.; and that although he the said Stephen did, with the privity and concurrence of the said John, and the best of his ability and power, defend the said actions or suits: Yet the said Stephen in fact further saith, that the said — Hills afterwards, and before the exhibiting the bill of him the said Stephen, to wit, in Hilary term in the twenty-sixth year of the reign of our lord the now king, recovered and obtained judgment against them the said Stephen and John in the court of our said lord the king of the bench, in the aforesaid action, at the suit of him the said — Hills, for a large sum of money, to wit, the sum of seventy-eight pounds; whereby, and in consequence of which said judgment, and of the same being unsatisfied, and also by reason of the said other action or suit being so brought against him the said Stephen and the said John as aforesaid, and also by reason of there being no other sort of defence to such action than to the said action at the suit of the said — Hills, which could there-

fore

fore be of no avail either to him the said Stephen or the said John, he the said Stephen, in order to prevent an execution against him upon the said judgment so obtained by the said — Hills as aforesaid, and also to prevent any further and unnecessary costs in the said action at the suit of the said Nixon; was afterwards, and before the exhibiting the bill of him the said Stephen against the said John, to wit, on, &c. forced and obliged, and did then and there pay a certain large sum of money, to wit, the said sum of seventy-eight pounds so recovered by the said — Hills as aforesaid, and the sum of fifteen pounds for and on account of the said debt in the said action at the suit of the said — Nixon, and of the costs of him the said — Nixon in such suit; and he the said Stephen was also forced and obliged to pay, and did then and there pay, divers other sums of money, amounting in the whole to a large sum of money, to wit, the sum of one hundred pounds, for and on account of the necessary costs and charges of him the said Stephen in and about his defence of his aforesaid actions or suits; and thereby, and by reason of such several promises, he the said Stephen was damnified; and did sustain costs; charges, and expences on account of his becoming such co-assignee as aforesaid with the said John, under the aforesaid commission of bankrupt against the said J. L. to a large amount in the whole, to wit, to the amount of two hundred pounds; whereof the said John afterwards, to wit, on, &c. had notice, and was required to indemnify him the said Stephen as to the same, according to the tenor and effect of the aforesaid promise and undertaking of the said J. in that behalf: Yet the said John, not regarding his said promise and undertaking, but contriving, &c. the said Stephen in this behalf, hath not in any manner whatsoever indemnified or borne him the said Stephen harmless from or in respect of the said costs, charges, and expences so by him sustained on account of his becoming such co-assignee as aforesaid with him the said John, under the said commission of bankrupt against the said J. L. nor re-imburshed the same, or any part thereof; but he so to do hath hitherto wholly refused and neglected, and still refuses so to do, contrary to the tenor and effect of the said last-mentioned promise and undertaking of him the said J. and in breach and violation thereof, to wit, at, &c.

V. LAWES.

FOR that whereas said defendant, just before the promise and undertaking of said defendant hereafter next mentioned, to wit, on, &c. was about to distrain on the goods and chattels of and belonging to one J. G. then being in and upon certain premises situate in the jurisdiction of the court of our lord the king of his palace of Westminster, and in the occupation of him said J. G. for certain rent then alleged by said defendant to be due and in arrear to him from said J. G.; and thereupon afterwards, to wit, on, &c. at, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would assist him said defendant in making such distress, he the said defendant undertook, *in consideration* plaintiff would assist defendant in making a distress on the goods of one J. G. he promised to indemnify him; plaintiff did assist defendant, and J. G. afterwards sued plaintiff and defendant in the palace court, and obtained judgment against them, when defendant refused to indemnify, *per quod* plaintiff was arrested, &c.

H b 2

and

and then and there faithfully promised said plaintiff, to indemnify him said plaintiff on that occasion: And said plaintiff in fact saith, that he, confiding, &c. did, after the making thereof, to wit, on, &c. assist said defendant in making a distress on said goods and chattels of said J. G. for said supposed arrears of rent, and said goods and chattels were then and there distrained by said defendant and plaintiff, and also by one A. B. for said rent so alleged to be due and in arrear to said defendant as aforesaid, and on that occasion they said plaintiff and defendant, &c. &c. did necessarily enter into the aforesaid premises of said J. G. and did seize, take, and carry away the aforesaid goods and chattels of said J. G. and sell and dispose of same, doing as little damage to said J. G. on that occasion as possible: And said plaintiff further saith, that after the making of said distress, and before the exhibiting the bill of said plaintiff, to wit, at the court of the king's palace of Westminster, holden at Southwark in the county of S. within the jurisdiction of said court, on, &c. before William earl Talbot, then steward of the king's household, Sir Philip Meadows, knight, then marshal of said household, and L. Blackburne, esq. then steward of the court, then judges of the court aforesaid, by virtue of the letters patent of Charles the Second late king of England, &c. bearing date at Westminster the fourteenth day of October in the sixteenth year of his reign, the aforesaid J. G. levied his certain plaint against said plaintiff and defendant, &c. at the suit of him said J. G. in a certain plea of trespass, to the damages of said J. G. of ninety-nine shillings, of and for the very same identical entering into the aforesaid premises of said J. G. and seizing, carrying away, and disposing of his said goods and chattels in manner aforesaid, and for what was done on that occasion as aforesaid, to wit, in making said distress on said goods and chattels as aforesaid: And said plaintiff in fact further saith, that such proceedings were had in said court of our said lord the king of his palace of Westminster, in and upon the plaint aforesaid, that afterwards, to wit, at the court of our said lord the king of his palace of Westminster, holden at, &c. in, &c. on, &c. before the aforesaid judges of said court, the said J. G. by the consideration and judgment of said court, recovered against plaintiff fifty pounds, which in and by same court were adjudged to said J. G. for his damages which he had sustained, as well on occasion of the trespass aforesaid as for his costs and charges by him about his suit in that behalf expended, whereof said plaintiff was convicted, as by the records and proceedings thereof remaining in said court of our said lord the king of his palace of Westminster plainly appears; of which said judgment, so recovered of said plaintiff in form aforesaid, said defendant afterwards, to wit, on, &c. at, &c. had notice: Yet said defendant, not regarding, &c. but contriving, &c. hath not indemnified said plaintiff on the occasion of the making of the aforesaid distress for and on the behalf of him said defendant as aforesaid (although to perform his aforesaid promise and undertaking in that respect he said defendant was requested by said plaintiff afterwards, to wit, on, &c. and often both before and afterwards,

terwards, to wit, at, &c.) ; but he so to do hath altogether neglected and refused; whereby said plaintiff, after the recovery of the aforesaid judgment against him, and before the exhibiting, &c. to wit, on, &c. at, &c. was arrested by his body, and taken into custody by virtue of his majesty's writ of *capias ad satisfaciendum*, issued out of the aforesaid court of our lord the king of his palace of Westminster, at the suit of said J. G. of and upon the aforesaid judgment, and was kept and detained in custody, under and by virtue of the aforesaid writ, for a long space of time, to wit, for the space of three months, and until he said plaintiff was forced and obliged, and did pay to the use of said J. G. a large sum of money, to wit, the sum of fifty pounds; and he said plaintiff was also forced and obliged, and did pay to the use of said J. G. a large sum of money, to wit, &c.; and he said plaintiff was also forced and obliged to, and did lay out, expend, and pay a large sum of money, to wit, &c. in and about his defence in the aforesaid action or suit at law and otherwise, and underwent and suffered great pain and anxiety of mind and body, and was and hath been and is, on occasion of the premises aforesaid, otherwise greatly injured and damaged, to wit, at, &c. &c. (Money laid out, &c. and common conclusion.)

V. LAWES.

MIDDLESEX, ss. S. S. late of, &c. was attached to answer unto A. L. and E. C. in a plea, &c.; and thereupon the said plaintiffs, by A. B. their attorney, complain: that whereas the said defendant, on, &c. made a certain bill of exchange in writing, subscribed with his own proper hand, according to the custom of merchants from time immemorial used and approved of, the said bill bearing date the same day and year aforesaid, then and there directed to the said plaintiffs by the name of, &c. and thereby required the said plaintiffs, at two months date, to pay to J. R. or order the sum of fifty pounds, as for value of him the said J. received, and to place it to account of the said defendant; and the said E. C. afterwards, to wit, on, &c. for himself and the said A. at the special instance and request of said defendant, accepted the said bill; and in consideration of the premises, he the said defendant undertook, and then and there faithfully promised the said plaintiffs, that he the said defendant would pay the said bill when it became due and payable, and to hold them the said plaintiffs indemnified therefrom: And the said plaintiffs in fact say, that the said bill afterwards, to wit, on, &c. became due and payable; whereof the said defendant then and there had notice: Yet the said defendant, not regarding, &c. but contriving, &c. did not, when the said bill so became due and payable as aforesaid, or at any other time whatsoever, pay the same, or the said sum of money therein mentioned, or any part thereof, or in any manner whatsoever indemnify, or keep or hold indemnified, the said plaintiffs, of, from, or against the said bill, according to the said promise and undertaking of the said defendant, but therein wholly failed and made default: and thereupon the said plaintiffs, for their discharge of and from the said bill, and from a judgment at law

Promise of indemnity, not accepted a bill drawn by defendant, which he promised to pay when due, but did not, and plaintiffs were forced to pay it, together with costs, on a judgment obtained against them thereon.

ASSUMPSIT SPECIAL.—TO INDEMNIFY,

thereupon recovered against them by the said J. R. afterwards, to wit, on, &c. were forced and compelled to pay and satisfy, and did then and there pay and satisfy, the said sum of fifty pounds to the said J. R. and a large sum of money, to wit, the sum of fifteen pounds, for costs of suit, to wit, at W. aforesaid. (Several other Counts for other money owing from defendant to plaintiffs.)

Drawn by MR. WARREN,

SOMERSETSHIRE, to wit. John Williams, clerk, and Elizabeth Ryal, widow, executor and executrix of the last will and testament of John Ryal deceased, complains of Francis Newman, esquire, being, &c. : for that whereas heretofore, and in the lifetime of the said J. R. to wit, *on the fifth March 1775*, at, &c. in, &c. in consideration that the said J. R. at the special instance and request of the said defendant, had then and there taken of him the said defendant certain lands and tenements, with the appurtenances, situate, lying, and being at, &c. in, &c. under a demise thereof then and there made to him by the said defendant for the space of one year from thence next ensuing, and so from year to year, for so long as it should please the said defendant and J. R. at and under a certain yearly rent therefore payable by the said J. R. to the said defendant, he the said defendant undertook, and then and there faithfully promised the said J. R. in his lifetime, that he the said defendant had good and sufficient right and title to demise the said lands and tenements, with the appurtenances, to the said J. R. as aforesaid, and that he the said defendant would save harmless and indemnify the said J. R. against any loss or damage which he the said J. R. might sustain by reason of the said defendant not having a good and sufficient right and title to make the said demise : And the said plaintiffs in fact say, that the said J. R. in his lifetime afterwards, to wit, on, &c. at, &c. entered into the said lands and tenements, with the appurtenances, and became and was possessed thereof, and held the same of the said defendant, under and by virtue of the said demise, for a long space of time, to wit, from thence until the time of the eviction hereafter mentioned; to wit, at, &c. : And the said plaintiffs further say, that the said F. had not, at the time of the making of the said demise, a good and sufficient right and title to demise the said lands and tenements, with the appurtenances, to the said J. R. as aforesaid; by reason whereof afterwards, and during the continuance of the said demise so made by the said defendant to the said J. R. as aforesaid, to wit, in the term of Easter in the fifteenth year of George the Third, one G. M. having a prior title to the said lands and tenements so demised as aforesaid, caused one John Doe, as the casual ejector, || in that behalf to be impleaded in the court of common pleas at Westminster, in a certain plea of trespass and ejectment of farm, brought in the name of Richard Roe on the demise of the said G. Y. to the said Richard Roe for a certain term then to come and unexpired against the said John Doe, for the recovery of the possession of parcel of the premises so demised

Declaration by the executor and executrix of testator against defendant, for not having indemnified the testator his tenant from year to year, who was evicted from the premises by the mortgagee, *per quod* he lost his crops.

demised to the said J. R. as aforesaid, and duly caused the said J. R. to be served with a copy of the declaration in the said ejectment, as tenant in possession of the said lands and tenements, with the appurtenances, in the said declaration of ejectment mentioned, being parcel of the said premises so demised to the said J. R. as aforesaid; whereof the said J. R. in his lifetime forthwith gave notice to the said defendant, to wit, at, &c.: And the said plaintiffs further say, that such further proceedings were therein had, that afterwards, to wit, in Trinity term in the fifteenth year aforesaid, it was considered in the said court of common pleas that the said R. R. should recover against the said J. D. his said term then to come of and in the said premises in the said declaration of ejectment mentioned, with the appurtenances, as by the said record and proceedings thereof now remaining in the said court of common pleas more fully appears: and thereupon such proceedings were had in the said cause that afterwards, to wit, in the term of the Holy Trinity in the seventeenth year of the reign of our said lord the now king, the said G. Y. did, in the name of the said R. R. sue out a certain writ of *hab. fac. possessionem* upon the said judgment, from the said court of common pleas, returnable before the justices of our said lord the king of the bench, on the morrow of All Souls then next; by virtue whereof afterwards, and during the continuance of the said demise so made to the said J. R. in his lifetime by the said defendant, to wit, on *fourteenth day of June 1777*, A. D. 1777, at, &c. in, &c. turned out, and expelled, and ejected the said J. R. from the possession of the said premises, with the appurtenances, in the said declaration in ejectment mentioned, being parcel of the said premises so demised to him by the said defendant as aforesaid, and wholly deprived him of the occupation of the same during the remainder of the said term demised by the said defendant as aforesaid: || And the said plaintiffs further say, that during the continuance of the said demise so made by the said defendant to the said J. R. as aforesaid, to wit, in the said term of Easter in the fifteenth year aforesaid, the said G. Y. having such prior right to the said lands and tenements so demised to the said J. R. as aforesaid, caused one J. D. as the casual ejector, &c. &c. [as before, from this mark || to this mark ||, and then proceed as follows]; And the said plaintiffs in fact say, that the said recovery and evictions against the said J. R. were occasioned by the said defendant not having a good and sufficient right and title to make the said demise to the said J. R. as aforesaid, to wit, at, &c.: And the said plaintiffs further say, that in the lifetime of the said J. R. and before the time of the evictions hereinbefore mentioned, or either of them, and during the continuance of the said demise, and of his possession of the said demised premises by virtue thereof, he the said J. R. expended and laid out divers large sums of money, to wit, the sum of two hundred pounds, in and about the ploughing, cultivating, manuring, and sowing divers, to wit, one hundred acres, of the said demised premises, and that, at the time of the said evictions, a large quantity of wheat and beans of great value, to wit, of the value of one

The date of the warrant on the writ of possession was the 13th of June.

Two ejectments were brought, all the premises not being comprised in the first.

Any day after
mortgage took
possession.

hundred and fifty pounds, were growing in and upon divers, to wit, fifty acres of the said demised premises, and would have been cut and carried away therefrom by the said J. R. in his lifetime, during the continuance of the said demise; and thus he the said J. R. by means of the said evictions, was not only deprived of the said crops so growing on the said demised premises, but also of other gains, profits, and advantages which would otherwise have accrued to him from the cultivating and manuring the same as aforesaid, and from the use and occupation thereof during the continuance of the said demise; that the loss and damage sustained by the said J. R. by reason of the premises, amounted to a large sum of money, to wit, the sum of two hundred pounds; whereof the said defendant afterwards, and in the lifetime of the said J. R., to wit, on, &c. at, &c. had notice, and was then and there requested to indemnify and save him harmless against the loss and damages so sustained by him as aforesaid, by reason of the said defendant not having a good right and title to make the said demise; Yet the said defendant, not regarding, &c. hath not saved harmless or indemnified the said J. R. in his lifetime, nor the said plaintiffs, executor and executrix as aforesaid, since the death of the said J. R. against the loss and damage so sustained by the said J. R. by reason of the premises above-mentioned (although often requested by the said J. R. deceased in his lifetime, and by the said plaintiffs, executor and executrix as aforesaid, since his decease); but so to do hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of his said promise and undertaking by him in that behalf made as aforesaid. (Add the common Counts for money due to the testator, and other common Counts for money due to the testator, with *assumpsits* to pay the plaintiffs, as executor and executrix, since the testator's death.) V. GIBBS,

Put the date the beginning of tenant's year; for instance, if he held from Michaelmas to Michaelmas, state the twen-

ty-ninth of September preceding the recovery by ejectment. V. GIBBS.

Declaration, in consideration of plaintiff's assigning to defendant the remainder of his term in certain premises, and of permitting defendant to receive certain arrears of rent due to plaintiff from his undertaking, defendant promised to pay to plaintiff's assessor the rent due, and indemnify him from any action on that account, against defendant, for not paying the rent, *per quod* an action was brought against plaintiff, &c.

LONDON, to wit. T. C. complains of T. B. being, &c.; for that whereas, before the time of the making the promise and undertaking hereinafter mentioned, to wit, on the day of 1788, the said plaintiff was possessed of and intitled to certain premises, to wit, two messuages and two yards, with the appurtenances, situate, lying, and being at L. in the county of M. for the residue and remainder of a certain term of years, whereof years were then to come and unexpired, by virtue of a certain demise to him the said plaintiff thereof, made by one J. K. by a certain indenture of lease at and under the yearly rent of pounds, payable to him the said J. K. by the said plaintiff, *part of which said premises, before and at the time of making the promise and undertaking* misfeas, before and at the time of making the promise and undertaking, for not paying the rent, *per quod* an action was brought against plaintiff, &c.

here-

Hereinafter next mentioned, were in the possession of *R. as*
tenant thereof to the said plaintiff, at and under a yearly rent, to
wit, the yearly rent of *pounds, and the residue of the said*
premises, during the time last aforesaid, was in the occupation of
one A. B. as tenant thereof to the said plaintiff, at and under a cer-
tain other yearly rent, to wit, the yearly rent of *pounds,*
and the same remained and continued in their respective occupations
until and after the twenty-fifth of December 1787, that is to say,
at London, &c.: And whereas, on the twenty-fifth of December
1787, there would become due and owing to the said J. K. un-
der and by virtue of the said demise and indenture of lease, the
rent or sum of *pounds, for one half year, ending at and*
upon the day and year last aforesaid, and which he the said plain-
tiff was liable to pay to the said J. K. to wit, at, &c.: And where-
as the said plaintiff, being so possessed and entitled as aforesaid, and
the said premises being so in the occupation of the said R. C. and
W. B. as aforesaid, afterwards, to wit, on the *day of*
at, &c. in consideration that the said plaintiff, at the spe-
cial instance and request of the said defendant, would assign, trans-
fer, and set over the said premises, with the appurtenances, so de-
mised to him the said plaintiff by the said J. K. as aforesaid, and all
his right and interest in and to the said demised premises, from Mi-
chaelmas then next following, for the residue and remainder of
the said term so thereof to come and unexpired as aforesaid, at and
for a large price or sum of money, to wit, at and for the price or
sum of *pounds, and would also permit and suffer said*
defendant to receive the respective rents which would be due and
owing from the said R. C. and W. B. for the occupation of the said
premises at and upon the said twenty-fifth December 1787, for one
half year from the twenty-fourth June 1787, he the said defendant
undertook, and to the said plaintiff then and there faithfully pro-
mitted, that he the said defendant would well and truly pay, and
cause to be paid, the aforesaid rent of the aforesaid premises, that
would become due and be owing to the said J. K. for one half
year from the said twenty-fourth June then last past, ending at
and upon the said twenty-fifth December 1787, and would indem-
nify and secure harmless the said plaintiff from all expences and
charges which might accrue and be incurred by the said plaintiff
from any action or suit brought by the said J. K. for the recovery
of the said rent against the said plaintiff: And the said plaintiff in
fact says, that he, relying on the said promise and undertaking of
the said defendant, did afterwards, to wit, on the *day of*
1787, assign, transfer, and set over the said premises,
with the appurtenances, so demised as aforesaid, and all his the said
plaintiff's right and interest in and to the said demised premises,
to hold to him the said defendant from Michaelmas then next fol-
lowing, for the residue and remainder of the said term; and did
afterwards, to wit, on the first January 1788, permit and suffer
the said defendant to receive the respective debts due and owing from
the said R. C. and W. B. for the occupation of the same premises
at

at and upon the said twenty-fifth December 1787, from Midsummer then last past, being for one half year, and amounting to a large sum of money, to wit, the sum of pounds of, &c. to wit, at, &c. by means whereof the said defendant became liable to pay, and ought to have paid, the rent of the aforesaid premises due and owing to the aforesaid J. K. for one half year, ending at and upon the said twenty-fifth December 1787, by virtue of the said demise so made by the said J. K. to the said plaintiff as aforesaid, amounting to a large sum of money, to wit, the aforesaid sum of pounds, according to the form and effect of his said promise and undertaking so by him made as aforesaid: Yet the said defendant, in no wise regarding his said promise and undertaking so by him made as aforesaid, but contriving, &c. in this behalf, did not at any time pay, or offer to pay, the said pounds, the aforesaid arrear of rent so due and owing to the said J. K. as aforesaid, or any part thereof to the said J. K. (although afterwards, to wit, on the same day and year aforesaid, at, &c. was requested so to do), and hath not indemnified and saved harmless the said plaintiff from all or any expences and charges which accrued and were incurred from a certain action or suit brought by the said J. K. for the recovery of the said rent against the said plaintiff as hereafter mentioned, although often requested, although he the said plaintiff, relying on the said promise and undertaking of said defendant, did not pay the said last-mentioned rent of pounds accrued, due, and owing to the said J. K. upon the said twenty-fifth December now last past; by reason whereof the said plaintiff became liable to be sued and prosecuted, and was afterwards, to wit, in term in the twenty-eighth year, &c. in the court of our lord the king, before the king himself, sued and prosecuted in a certain action or suit for breach of covenant for non-payment of rent in the counterpart of the said lease so made to the said plaintiff by the said J. K. as aforesaid, contained for the recovery of the said arrear of rent so due and owing as aforesaid, which said action or suit was prosecuted and continued to be prosecuted until he the said plaintiff, in order to put an end to the aforesaid action or suit, and to prevent the said J. K. from further proceeding therein, and to prevent any further expence in the said action or suit, was afterwards, to wit, on the day of forced and obliged to pay, and did actually pay, the aforesaid rent so due and owing to the said J. K. as aforesaid, and also a large sum of money, to wit, the sum of of like, &c. for the costs and charges of the said J. K. by him about his suit in that behalf expended; and the said plaintiff was also forced and obliged to lay out and expend, and did actually lay out and expend, a large sum of money, to wit, the sum of pounds of like, &c. in and about his defence in the aforesaid action or suit, from which said several sums so paid by the said plaintiff as aforesaid (the same being the expences and charges which accrued and were incurred from the aforesaid action or suit) he the said defendant hath not indemnified or saved harmless the said plaintiff, although often requested

requested so to do; but hath therein wholly failed and made default, contrary to the form and effect of the said promise and undertaking of the said defendant so by him made as aforesaid. (2d Count same as first, omitting what is in Italic; 3d, *indebitatus assumpsit* for the purchase-money of and for divers leasehold estates and premises sold, assigned, transferred, and set over by plaintiff to defendant, and by defendant bought, accepted, and received; common Counts and breach.)

Drawn by MR. GRAHAM.

LONDON, to wit, &c. : for that whereas, before and at the time of making of the promises and undertakings hereinafter mentioned of the said W. he the said W. was a broker employed by divers persons in buying and selling of cotton, to wit, at, &c. ; and being such broker, on the first of November 1786, at, &c. in consideration that the said J. at the special instance and request of the said W. would employ the said W. as such broker as aforesaid, to buy for the said J. a large quantity, to wit, ninety bags of cotton, for the purpose of being resold by the said J. for a certain reasonable hire or reward to be therefore paid by the said J. to the said W. for his labour and trouble therein, and also for a certain further premium or reward to be paid by the said J. to the said W. to wit, at and after the rate of ten shillings by the hundred upon the amount of the prices for which such cottons should be resold, as a consideration for the said W.'s guaranteeing and indemnifying the said J. from any loss that might arise to him the said J. on the resale of the said ninety bags of cotton, he the said W. undertook, and faithfully promised the said J. to buy such cotton for the said J. and that he the said W. would guarantee and indemnify the said J. from any loss that might arise to him upon the resale of the said cotton : And the said J. avers, that he the said J. confiding in the said promise and undertaking of the said W. and in hopes of the faithful performance thereof, afterwards, to wit, on the fourth November 1780, at, &c. did employ the said W. as such broker as aforesaid, to buy for the said James the said quantity, to wit, ninety bags of cotton-wool, for such hire, reward, and premium respectively to be paid by the said J. to the said W. as aforesaid : And the said J. avers, that the said W. in pursuance of his said employment as such broker of the said James as aforesaid, afterwards, to wit, on the day of in the year aforesaid, at, &c. did buy for the said J. of divers persons, the said ninety bags of cotton, for divers large sums of money to be therefore paid by the said J. amounting in the whole, to wit, to the sum of pounds : And the said J. avers, that after the buying of the said cotton by the said W. for the said J. as aforesaid, to wit, on the said fourth November in the year aforesaid, and on divers other days and times between that day and the first day of August then next following, at, &c. he the said J. did resell to divers persons, in parcels, the said ninety bags of cotton, at and for

Declaration against a broker, on a special agreement that he should guarantee and indemnify plaintiff for any losses he might sustain on the resale of cottons which he had bought of defendant, and on which he had allowed him an additional premium for guaranteeing and indemnifying plaintiff from his losses.

for certain prices, amounting in the whole to the sum of pounds, being the best prices and most money he the said J. would get for the same, whereby there did then and there arise to the said J. and the said J. did then and there sustain a loss, to wit, of six hundred and eighteen pounds two shillings and fourpence, upon the resale of the said ninety bags of cotton; whereof the said W. afterwards, to wit, on the second August, at, &c. had notice, and was then and there requested by the said J. to guarantee and indemnify the said J. from such loss. (2d Count same as first, only stating fifty bags of cotton to have been bought of *Messrs. J. and J. Entwistle and Company* for pounds, which plaintiff resold for pounds, and thereby lost pounds. 3d Count same as 2d, only stating forty bags of cotton to have been bought from *Thomas Bateman* for pounds, which plaintiff resold for pounds, and thereby lost pounds.) And whereas also afterwards, to wit, on the fourth November 1786, at, &c. in consideration that the said J. at the like special instance and request of the said W. had employed the said W. as such broker as aforesaid, to buy for the said J. a large quantity, to wit, ninety bags of other cotton, which the said W. then and there bought for the said James accordingly, and that the said J. had agreed to give and pay to the said W. a certain premium or reward as a consideration for guaranteeing and indemnifying the said J. from any loss that might arise to the said James upon the resale of such last-mentioned cotton, he the said W. undertook, and then and there faithfully promised the said J. that he the said William would guarantee and indemnify the said J. from any loss that might arise from the resale of the said last-mentioned cotton: And the said J. avers, that he the said James afterwards, to wit, on the said fourth November, and on divers other days between that day and the said first of August then next following, at, &c. did resell the said last-mentioned ninety bags of cotton at and for certain prices, amounting in the whole, to wit, to one thousand six hundred pounds, being the best prices and most money he the said James could get for the same, whereby there did then and there arise to the said J. and the said J. did then and there sustain a loss, to wit, of pounds, upon the resale of the said ninety bags of cotton; whereof the said W. afterwards, to wit, on the second August, at, &c. had notice, and was then and there required by the said J. to guarantee and indemnify the said James from such loss so by him sustained as last aforesaid. (5th Count same as 4th, only stating fifty bags, and loss. 6th Count same as 4th, only stating forty bags, and loss thereon as in 3d Count. Common Counts): Yet the said W. not regarding, &c. but contriving, &c. hath not paid the said several sums of money, or any of them, or any part thereof, to the said James, or in anywise guaranteed or indemnified the said J. from the losses aforesaid, or any part thereof (although so to do he the said William afterwards, to wit, on the same day and year last aforesaid, and often before and since, at London, &c. was requested,

ed, but he to pay the same, or any part thereof, to the said J. or in any wise to guarantee or indemnify the said J. from the losses aforesaid, hath hitherto altogether refused, and still doth refuse, (Damage three thousand pounds.)

GEO. WOOD.

Michaelmas Term, 29. Geo. 3.

LINCOLNSHIRE, *ss.* Isaac Wood, late of, &c. was attached to answer William Motley and John Mill in a plea of, &c. : for that whereas heretofore, to wit, on, &c. at, &c. in, &c. a certain large sum of money, to wit, the sum of fifty-eight pounds eleven shillings and threepence halfpenny of lawful money of Great Britain, at the special instance and request of the said Isaac, had been and was paid to the said Isaac in consideration of his, from time to time, indemnifying the parishioners of the parish of, &c. in, &c. against the charges of maintaining and providing for a certain bastard-child, to wit, one M. K. the daughter of Agnes, now the wife of Solomon Matchett, then A. K. spinster; which said child was then and there chargeable to the said parish, and so likely to continue: and thereupon, in consideration of such payment as aforesaid, and of the said child being so chargeable to the said parish as aforesaid, to wit, on, &c. at, &c. in, &c. he the said Isaac undertook, and then and there faithfully promised, to pay to the churchwardens and overseers of the poor of the said parish of, &c. for the time, upon demand, the sum of one shilling and sixpence weekly and every week during so long as the said M. K. the daughter of the said A. K. the bastard-child aforesaid, should be chargeable to the said parish of, &c. : And the said William and John in fact say, that the said M. K. the said bastard-child, from the time of the making of the said promise and undertaking of the said Isaac, for a long space of time, to wit, from thence hitherto, hath been and still is chargeable to the said parish of, &c. and hath, during all that time, been maintained and supported by and at the expence of the parishioners of the parish of, &c. ; whereof the said Isaac afterwards, to wit, on, &c. at, &c. in, &c. had notice: And the said William and John further say, that he the said William then and there was, and from thence hitherto hath been, and still is, the churchwarden of the said parish, and the said John then and there was, and from thence hitherto hath been, and still is, overseer of the poor of the said parish; whereof the said John then and there also had notice; whereby, and by reason of the said several premises, and of the aforesaid promise and undertaking of the said Isaac, he the said Isaac became liable to pay on demand to the said William and John, as such churchwarden and overseer of the said parish as aforesaid, so much money as the several sums of one shilling and sixpence a week during the several weeks the said M. K. the said bastard-child, was chargeable to the said parish, amounts to, and which said several sums do amount to a large sum of money, to wit, the sum of fifty pounds; and being so liable, he the said Isaac, in consideration thereof, afterwards, to wit, on, &c. at, &c. in, &c. undertook, and then and there faithfully pro-

Declaration, defendant had received a sum of money from the father of a bastard-child, with which he was to pay the parish a weekly allowance for the supporting it; the parish-officers agreed to let the defendant have the money in his hands on condition of his paying one shilling and sixpence for every week which the said child should be chargeable to the parish.

2d Count.

promised the said William and John, as such churchwarden and overseer as aforesaid, to pay them the said sum of money when he the said Isaac should be thereto afterwards requested. And whereas heretofore, to wit, on, &c. at, &c. in, &c. one R. C. then and there being the putative father of a certain other bastard-child, to wit, one M. K. which said last-mentioned child was then and there chargeable to the said parish, and likely to continue so, claimed from the parishioners of the said parish a large sum of money; to wit, the sum of fifty-eight pounds eleven shillings and threepence halfpenny, as due to him for and in respect of certain disbursements by him the said R. C. made for and on account of the parishioners of the said parish during a certain period in which he the said R. C. had been and was overseer of the poor of the said parish, but which said demand the said parishioners refused to satisfy, unless security was given to the said parishioners to indemnify them against the charges of the maintenance of the said last-mentioned bastard-child; whereupon, in order to indemnify the said parishioners of the said parish against the said charges, afterwards, and whilst the said R. C. so claimed such money to be due to him as aforesaid, to wit, on, &c. at, &c. in, &c. it was agreed by and between the said parishioners and the said Isaac; by and with the privity and consent of the said R. C. that the said parishioners should pay into the hands of the said Isaac the said sum of money so claimed as aforesaid, and that the said Isaac should receive the same, and thereout pay to the churchwardens and overseers of the poor of the said parish for the time being, upon demand, the sum of one shilling and sixpence weekly, from the seventeenth day of, &c. for and during so long a time as the said M. K. the said last-mentioned bastard-child should be chargeable to the said parish: And the said William and John in fact say, that a large sum of money, to wit, the sum of fifty-eight pounds eleven shillings and threepence halfpenny, being the money so claimed by the said R. C. as aforesaid, was, after the making of the said agreement, and in confidence of a performance thereof, to wit, on, &c. at, &c. in, &c. paid by the said parishioners to the said Isaac, at his special instance and request, and was then and there by him received, by and with the consent of the said R. C. in order and for the purpose of paying thereout to the churchwardens and overseers of the poor of the said parish for the time being, upon demand, the sum of one shilling and sixpence weekly during so long time as the said Mary, the said last-mentioned bastard-child, should be chargeable to the said parish: And the said William and John further say, that the said M. K. the said last-mentioned bastard-child, for a long space of time, to wit, from thence hitherto, hath been and still is maintained and supported by and at the expence of the parishioners of the said parish, and hath, during all that time, been, and still is, chargeable to the said parish; whereof the said Isaac afterwards, to wit, on, &c. at, &c. in, &c. had notice: And the said William and John further say, that he the said William then was, and from thence hitherto hath been, and still is, the churchwarden

of

of the said parish, and the said John then was, and from thence hitherto hath been, and still is, the overseer of the poor of the said parish; whereof also the said Isaac then and there had notice; whereby, and by reason of which said several last-mentioned premises, he the said Isaac became liable to pay on demand, &c. &c. (Finish this Count same as the first.) And whereas, &c. &c. (for meat, drink, washing, lodging, wearing apparel, and other necessities; 4th, *quantum meruit*. Add all the other common Counts; account stated; and common conclusion.) 3d Count.

In order to support this action, it will be necessary to prove the defendant's hand-writing to the note; and, if possible, the transaction which gave rise to it; and that the bastard has been supported by the parish: this will throw it on the defendant to discharge himself, by shewing he has complied with the terms of his undertaking, by paying one shilling

and sixpence a week. The plaintiffs may likewise shew, in support of their case, that the defendant did for some time pay for the maintenance of the child; they must also prove that they are the churchwardens and overseers, and that a demand has been made on the defendant for the money: no person paying to the poor's rate can be witnesses. S. LAWRENCE.

MIDDLESEX, *J.* H. Cain, William Finch, John Johnstone, and William Weston, complain of John Shirley, being, &c. in a plea of trespass on the case, &c.: for that whereas, long before and at the time of making the promise and undertaking of the said J. S. hereafter next mentioned, and from thence hitherto, the said H. C. and W. F. were, have been, and are, the two churchwardens of the parish of Asled in the county of Surry, and as such, during all that time, were, have been, and are, two of the overseers of the poor of the said parish, and the said J. J. and W. W. during all the time aforesaid, were, have been, and are, the other two overseers of the poor of the said parish: And whereas, before the making of the promise and undertaking of the said J. S. hereafter next mentioned, to wit, on the sixteenth of February 1787, at the parish of A. aforesaid, Elizabeth Bamboud, of the said parish of A. single woman, by her examination then and there taken in writing upon oath before M. M. clerk, one of the justices of our lord the king, assigned to keep the peace of our said lord the king in and for the said county of S. and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, declared and said, that on, &c. at the parish of, &c. she the said Elizabeth was delivered of a male bastard-child; and that the said male bastard-child was likely to become chargeable to the said parish of A.; and that J. G. of the parish of Steyning in the county of Sussex, post-chaise-driver, did get her with child of the said bastard-child: And whereas, before the making of the promise and undertaking of the said J. S. hereafter next mentioned, to wit, on, &c. at, &c. the said H. C. then being one of the overseers of the poor of the said parish of A. as aforesaid (as such overseer), in order to indemnify the said parish of A. in the premises, applied to him the said M. M. (so being such justice) to issue his warrant for the apprehending of the

Declaration in
assumpsit by
churchwardens
and overseers of
a parish against
a surety for the
putative father
of a bastard-
child, who was
apprehended
under a warrant
backed by another
magistrate
in another county;
in consideration
that they would permit
him to go at
large, defendant
undertook to in-
demnify the pa-
rish for one
month, till the
father could find
security.

ASSUMPSIT SPECIAL. — To INDEMNIFY;

the said J. G. : and thereupon he the said M. M. (so being such justice as aforesaid) afterwards, and before the making of the said promise and undertaking of the said J. S. hereafter next mentioned, to wit, on, &c. last aforesaid, at the parish of A. aforesaid, duly made his certain warrant in writing, under his hand and seal, bearing date the day and year last aforesaid, directed to the constables of the parish of A. in the said county of Surry, and to the said H. C. one of the overseers of the poor of A. aforesaid in the county aforesaid; by which said warrant the said M. M. (so being such justice) commanded them immediately to apprehend the said J. G. and to take him before the said M. M. or some other of his majesty's justices of the peace of the said county of S. to find security to indemnify the said parish of A. or else to find sufficient security for his appearance at the then next general quarter-sessions of the peace to be holden for the said county of Surry, and to abide by such order or orders as should be made in pursuance of an act passed in the eighteenth year of the reign of her late majesty queen Elizabeth concerning bastards begotten and born out of lawful matrimony; which said warrant afterwards, and before the making of the promise and undertaking of the said J. S. hereafter next mentioned, to wit, on, &c. aforesaid, at, &c. was delivered unto the said H. C. so being one of the overseers of the poor of the parish of A. : And whereas, before and at the time of the caption of the said J. G. hereafter mentioned, he the said J. G. was not in the county of Surry, to wit, in the county of Suffex: and thereupon he the said H. C. afterwards, to wit, on the twenty-sixth June 1787 aforesaid at the parish of S. and county of Suffex, took the said warrant to Samuel Blount, then being one of the justices of our lord the king aforesaid, to keep the peace of our said lord the king in and for the county of Suffex, and also to hear and determine divers felonies, trespasses, and other misdeeds committed in the said county, and requested him to indorse the said warrant, according to the form in such case made and provided, for the purpose of apprehending the said J. G. in the said county of Suffex; and the said S. B. so being such justice (upon proof on oath of the hand-writing of the said M. M. on the said warrant subscribed) duly indorsed his name upon the said warrant, according to the form of the statute in such case made and provided, and thereby authorized and empowered the said H. C. so being such overseer for the poor of the parish of A. to execute the said warrant in the said county of Suffex, and then and there delivered the said warrant so indorsed to the said H. C. to be executed in due form of law; by virtue of which said warrant so indorsed, the said H. C. so being such overseer as aforesaid, afterwards, and before the making of the promise and undertaking of the said J. S. hereafter next mentioned, to wit, on the said twenty-sixth June in the year aforesaid, that is to say, at Sounton in the said county of Suffex, apprehended the said J. G. and then and there had him in his said H. C.'s custody, for the cause and purpose in the said warrant expressed: and thereupon afterwards, whilst the said H. C. W. F.

J. J.

J. J. and W. W. were such overseers of the poor of the said parish of A. as aforesaid, and whilst the said J. G. was so in custody, under and by virtue of such warrant as aforesaid, and before he had found any security to indemnify the said parish of A. or any surety for his appearance at the general quarter sessions of the peace to be holden for the county of Surry, as expressed in the said warrant, to wit, on, &c. last aforesaid, at, &c. in consideration of the premises, and also in consideration that the said H. C. W. F. J. J. and W. W. at the special instance and request of the said J. S. would suffer and permit the said J. G. to go at large from and out of such custody as aforesaid, to wit, for the purpose of enabling the said J. G. to obtain and procure means to indemnify the said parish of A. in the premises, within one month then next following, he the said J. S. undertook, and faithfully promised the said H. C. W. F. J. J. and W. W. to pay forty pounds to the overseers or churchwardens of the said parish of A. within one month then next following, if the said J. G. did not come and settle with the said overseers or churchwardens within the said month, for the said E. B.'s said child (that is to say, to indemnify the parish of A. in the premises): And the said H. C. W. F. J. J. and W. W. in fact say, that they, confiding in the said promise and undertaking of the said J. S. did then and there suffer and permit the said J. G. to go at large from and out of such custody as aforesaid, to wit, for the purpose aforesaid, and the said J. G. did then and there accordingly go at large from and out of such custody, under and by virtue of that permission, without finding any other security to indemnify the said parish of A. and without finding any security for his appearance at the next general quarter sessions of the peace to be holden for the said county of Surry for the purpose in the said warrant expressed, nor hath he at any time hitherto found or given any other security or surety to indemnify the said parish: And the said H. C. W. F. J. J. and W. W. in fact further say, that although they the said H. C. &c. have from thence hitherto remained and continued such churchwardens and overseers of the poor of the parish of A. as aforesaid; and although they have, during all that time, been ready and willing to settle with the said J. G. respecting the said child, and to take and accept for him a proper indemnity to indemnify the said parish of A. in the premises; and although the said child of the said E. B. hath for a long time, to wit, from the time of the making of the promise and undertaking of the said J. S. been chargeable to the said parish: Yet the said J. G. did not at any time within the said month, or at any time afterwards, come and settle with the said H. C. &c. as such churchwardens respectively as aforesaid, or with any or either of them, for such child, or hath he as yet given any security whatsoever to indemnify the said parish of A. or in any manner indemnified the same in the premises other than as aforesaid, but hath omitted and neglected so to do, and the said parish, and the inhabitants and parishioners thereof, have been and are damaged by reason and in consequence of the pre-

ASSUMPSIT SPECIAL.—TO ACCOUNT.

misés aforesaid, to a large amount, to wit, to the amount of forty pounds of lawful money of Great Britain, for money necessarily laid out, expended, and disbursed on account of the premises aforesaid, to wit, at, &c.; of which said several premises the said J. S. since the expiration of the said month, and before the exhibiting of the said H. C. &c. to wit, on, &c. at, &c. had notice; and by reason of which said several premises the said J. S. became liable to pay to the said H. C. &c. so being respectively such churchwardens and overseers of the said poor of the said parish of A. the said sum of forty pounds, so by him promised to be paid as aforesaid.

V. LAWES.

ASSUMPSIT—MORE PARTICULARLY RELATING TO PERSONS.

TO ACCOUNT.

Declaration by an administrator whose intestate had delivered to defendant a set of bills of exchange to negotiate for him, on a promise to account, against defendant for receiving the money and not accounting.

LONDON, to wit. R. M. administrator, &c. of W. S. complains of A. M. being, &c.: for that whereas, on the fourteenth of April 1764, at, &c. in consideration that the said W. S. in his lifetime, at the special instance and request of the said A. had then and there delivered to the said A. a certain set of bills of exchange, before then drawn in certain parts beyond the seas, to wit, at the island of , by one W. D. on one R. G. at Boston, for one hundred and seventy pounds sterling; for which sum he the said A. M. undertook, and then and there faithfully promised the said W. in his lifetime, to be accountable to the said W. or his order, after deducting the charges which might attend the negotiating the said bill, to be paid forty days after the said Anthony should have advice of the said bill being accepted and paid; and although the said A. then and there, to wit, on the same day and year aforesaid, at, &c. had and received the said set of bills of exchange from the said W. in his lifetime; and although the said bill afterwards, to wit, on, &c. at, &c. aforesaid, was accepted by the said R. and the said sum of pounds, in the said bill mentioned, was then and there paid by the said R. to the said A. or to whom the said A. had indorsed the same; of which said premises the said A. afterwards, to wit, on, &c. had notice; and although no charges or expences whatsoever attended the negotiating the said bill to the said A.; and although forty days and more have elapsed and run out since the said A. had notice of the said acceptance and payment of the said bill: Yet the said A. not regarding, &c. hath not accounted with the said W. in his lifetime, or with the said R. as administrator as aforesaid, after the death of the said W. or with either of them, for the said sum of one hundred and seventy pounds or paid the said sum of one hundred and seventy pounds in the said bill mentioned, or any part thereof, either to the said W. in his lifetime, or to the said R. as administrator as aforesaid, since the death of the said W. although, &c.; but so perform his said promise

mise and undertaking in this behalf hath hitherto wholly refused, and still refuses. (2d Count, for money had and received to intestate's use; and breach to the same.)

Drawn by MR. WARREN.

SUFFOLK, to wit. R. K. complains of W. C. being, &c.: Declaration against defendant for not accounting for the profits of plaintiff's farm, which plaintiff entrusted to his care, &c. according to promise.

for that whereas the said R. on the day of in the year of Our Lord , and before, and continually from thence until and at the several times hereinafter next mentioned, was lawfully possessed of and entitled to a certain farm and lands situate and being at, &c. in the said county, and also of and in certain stock and utensils in husbandry, and other goods and effects used and employed in the management of the said farm and lands, to wit, at Ipswich in the said county; and being so possessed thereof, to wit, on the same day and year aforesaid, at Ipswich, &c. in consideration that the said R. at the special instance and request of the said W. had employed the said W. in the management, cultivation, ordering, and taking care of the said farm and lands, to and for the use, benefit, and advantage of the said R. at and for a certain reasonable salary or reward, to be therefore paid by the said R. to the said W. he the said W. *assumpsit, &c.* that he would manage, cultivate, order, and take care of the said farm and lands during the time he should be so retained and employed by the said R. as aforesaid, in a proper and husbandlike manner, and that he the said W. would render to the said R. a reasonable, fair, and just account of the profits arising and accruing therefrom, when he the said W. should be thereunto afterwards requested: And the said R. in fact says, that although he the said W. afterwards, to wit, on, &c. entered upon his aforesaid employment, and remained and continued to manage, cultivate, order, and take care of the said farm and lands continually from thence until and upon the twenty-ninth of September 1786, to wit, at, &c.: And the said R. further saith, that although he the said W. during all the time he so managed, cultivated, ordered, and took care of the said farm and lands of the said R. as aforesaid, had received and took the issues and profits from time to time arising, issuing, and accruing from the said farm and lands, amounting in the whole to a large sum of money, to wit, to the sum of pounds of, &c. to wit, at, &c.: Yet the said W. not regarding, &c. but contriving, &c. hath not yet rendered to him the said R. a reasonable, fair, and just account of the profits arising and accruing as aforesaid from the aforesaid farm and lands, nor of the aforesaid monies arising and accruing therefrom as aforesaid, although so to do he the said W. by the said R. afterwards, to wit, on the first of January 1787, and often since, at, &c. was requested; but on the contrary thereof, he the said W. afterwards, to wit, on the same day and year last aforesaid, at, &c. rendered to the said R. an unfair, false, erroneous, unjust, and unfair account of the profits arising and accruing from the said farm and lands, and

ASSUMPSIT SPECIAL.—To ACCOUNT.

of the aforesaid monies by him received, contrary to the form and effect of the said promise and undertaking so by him made as aforesaid. (Common Counts.)

Drawn by MR. GRAHAM.

Declaration in assumpsit against defendant, for selling a piece of goods delivered to him for that purpose, and not accounting for the money.

LANCASHIRE, to wit. J. B. against H. K.: for that whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered and caused to be delivered to him divers worsted manufactured goods, to wit, one piece of, &c. to be sold and disposed of by the said defendant for the said plaintiff, he the said defendant undertook and then and there faithfully promised the said plaintiff, to sell and dispose of the said goods, and to pay the money arising therefrom, or otherwise to account for the same to him the said plaintiff, when he the said defendant should be thereto afterwards requested; and although he the said defendant did afterwards sell and dispose of the said goods for a large sum of money, to wit, the sum of two pounds of lawful money of Great Britain, and had and received the money arising therefrom, to wit, at, &c. in &c.: Yet the said defendant, contriving, &c. the said plaintiff in this behalf, hath not as yet paid the money arising from the sale and disposition of the said goods, or otherwise accounted for the same to him the said plaintiff (although to do this he the said defendant was requested by the said plaintiff afterwards, to wit, on, &c. and often afterwards, to wit, at, &c.); but he to do this hath hitherto wholly refused, and still refuses so to do. And whereas heretofore, to wit, on, &c. at, &c. in, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had delivered and caused to be delivered divers other manufactured worsted goods, to wit, one lasting, to be sold and disposed of by the said defendant for the said plaintiff, he the said defendant undertook, &c. to render a just and reasonable account thereof to him the said plaintiff, when he the said defendant should be thereto afterwards requested: Yet the said defendant, not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving, &c. the said plaintiff in this behalf, hath not as yet rendered a just and reasonable or other account of the said lasting (although to do, &c.); but he so to do hath hitherto wholly refused, and still refuses so to do. (Add Counts for goods sold, &c.; the money Counts, &c.)

2d Count.

THO. BARROW.

Special assumpsit, for not accounting to plaintiff for the produce of goods delivered to defendant for sale in foreign parts.

LONDON, ff. If Walter Baker makes you secure, &c. then put, &c. by safe and sure pledges Thomas Green, late of London, broker, that he be before our lord the king at Westminster in eight days of the Purification, wheresoever, &c. to shew: for that whereas, on the twenty-first day of July in the year of Our Lord 1759,

at L. aforesaid, in the parish of St. Mary-le-Bow in the ward of Cheap, in consideration that the said plaintiff, at the special instance and request of the said defendant, *would deliver* to the said defendant certain goods, wares, and merchandizes, to wit, seventy-two dozen of certain powders called fever powders of the said plaintiff, of the value of seventy-two pounds of lawful, &c. to be by the said defendant taken to Gaudaloupe, and there to be by the said defendant sold, he the said defendant undertook, and then and there, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, faithfully promised the said plaintiff, to be accountable to him the said plaintiff for the said goods, wares, and merchandizes, at the rate of twenty shillings by the dozen for each and every dozen thereof, or to return what he the said defendant should bring back from Gaudaloupe: And the said plaintiff says, that he, confiding in the said promise and undertaking of the said defendant, so by him made in this behalf as aforesaid, did afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, at the request of the said defendant, deliver the said goods, wares, and merchandizes to the said defendant for the purposes aforesaid; and that the said defendant then and there, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, had and received the same of and from the said plaintiff for the purposes aforesaid: And the said plaintiff further says, that although he the said defendant afterwards, to wit, on the first of August A. D. 1760, at L. aforesaid, in the parish and ward aforesaid, did return from his said voyage, and return to the said plaintiff a part of the said goods, wares, and merchandizes, to wit, eleven dozen of the said powders; and although he the said defendant had theretofore sold the residue thereof: Yet the said defendant, not regarding his aforesaid promise and undertaking, so by him made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this respect, hath not yet accounted to the said plaintiff for the remaining sixty-one dozen of powders, or any part thereof, at the rate or price aforesaid, or at any other rate or price, or returned the same, or any part thereof, to the said plaintiff (although to perform his promise and undertaking, so by the said defendant made in this behalf as aforesaid, he the said defendant was requested by the said plaintiff afterwards, to wit, on the same day and year last aforesaid, and often both before and afterwards, to wit, at L. &c. aforesaid); but he the said defendant to perform his aforesaid promise and undertaking, so by him made in this behalf as aforesaid, hath hitherto absolutely refused, and still refuses. And whereas afterwards, to wit, on the twenty-first of July A. D. 1759 aforesaid, at L. &c. aforesaid, in consideration that the said plaintiff, at the special instance, &c. of defendant, *had delivered* to the said defendant certain other goods, wares, and merchandizes, to wit, seventy-two dozen of powders, called fever powders, of the said plaintiff, of the value of seventy-two pounds of lawful, &c. to be

2d Count.

by the said defendant taken to Gaudaloupe in America, there to be by the said defendant sold, he the said defendant then and there, to wit, on the same day and year last aforesaid, at L. &c. aforesaid, undertook, and faithfully promised the said plaintiff, to be accountable to him the said plaintiff for the said seventy-two dozen of powders, at the rate of twenty shillings by the dozen for each and every dozen thereof, or to return what he the said defendant should bring back from Gaudaloupe: And the said plaintiff says, that although the said defendant then and there, to wit, on the same day and year last aforesaid, at L. &c. aforesaid, had and received the said seventy-two dozen of powders of and from the said plaintiff, for the purposes aforesaid; and although the said defendant afterwards, to wit, on the first of August 1760 aforesaid, at London, &c. aforesaid, did return from his said voyage, and return to the said defendant a part of the said last-mentioned goods, &c. to wit, eleven dozen of the said powders; and although the said defendant had theretofore sold the residue thereof, &c. (Conclusion same as to the first Count; two Counts for goods sold and delivered; and for money laid out, had, and received; and common conclusion to those two Counts.)

Drawn by MR. WARREN.

Declaration against defendant, for not rendering an account of timber, or of the money arising from the sale thereof, consigned by the plaintiff to the defendant to be sold by commission.

LONDON, to wit, T. C. v. W. W.: for that whereas on, &c. at, &c. in &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had delivered and caused to be delivered to the said defendant divers large quantities of timber, to wit, five hundred cart-loads of timber of and belonging to the said plaintiff, of a large value, to wit, of the value of two hundred pounds of lawful money of Great Britain, to be sold and disposed of by the said defendant for the said plaintiff, for a certain reasonable reward or commission to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to sell and dispose of the said timber for the said plaintiff, and to render a reasonable account thereof to the said plaintiff, whenever he the said defendant should be thereunto afterwards requested: And the said plaintiff avers, that the said defendant afterwards, to wit, on, &c. at, &c. did dispose of and sell the said timber for a large sum of money, to wit, the sum of two hundred pounds of like lawful money, and then and there received the said money for the same: Yet the said defendant, not regarding, &c. but contriving, &c. hath not yet rendered the said Thomas any reasonable account of the said timber, or any part thereof, although so to do he the said defendant by the said Thomas afterwards, to wit, on, &c. and often since, at, &c. was requested; but he so to do hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said promise and undertaking so made by the said defendant as aforesaid. And whereas also afterwards, to wit, on, &c. at, &c. in considera-

ed Count, to sell by commission,

tion

tion that the said plaintiff, at the like special instance and request of the said defendant, had delivered and caused to be delivered to the said William divers other large quantities of timber, to wit, five hundred other cart-loads of timber of the said plaintiff, of other great value, to wit, of the value of other two hundred pounds of like lawful money, to be sold and disposed of by the said defendant for the said plaintiff, for a certain other reasonable reward or commission to be therefore paid by the said plaintiff to the said defendant, he the said defendant undertook, &c. the said plaintiff to render to him the said plaintiff a reasonable account of the said last-mentioned timber, and of the monies which should arise from the sale thereof, or of so much thereof as should be sold by the said defendant: And the said plaintiff avers, that he the said defendant afterwards, to wit, on, &c. at, &c. sold and disposed of the said last-mentioned timber for another large sum of money, to wit, the sum of other two hundred pounds of, &c.: Yet the said William, not regarding, &c. but contriving, &c. hath not yet rendered to the said plaintiff a reasonable or any other account of the said last-mentioned timber, or of the monies which arose from the sale thereof, or of any part thereof, although, &c. (as before). (Add the money Counts; account stated; and common conclusion.)

Drawn by MR. GRAHAM,

TO MARRY, AND ON MARRIAGE CONTRACTS.

MIDDLESEX, to wit. Mary Camelford, late of, &c. was attached to answer Charles Bourne, gentleman, in a plea, &c.: for that whereas heretofore, to wit, on, &c. in consideration that the said plaintiff (who was then and there sole and unmarried) had then and there, at the special instance and request of the said Mary (who was also then and there sole and unmarried), undertaken, and faithfully promised the said defendant, that he the said plaintiff would marry and take her the said defendant to wife, when he should be thereto afterwards requested, she the said defendant then and there undertook, and faithfully promised the said plaintiff, that she the said defendant would marry and take him the said plaintiff to husband, when she the said defendant should be thereto afterwards requested: And the said plaintiff in fact further saith, that although he the said plaintiff, confiding in the said promise and undertaking of the said defendant, hath always from thence hitherto remained and continued, and still is, sole and unmarried; and although he hath always since the making of the said promise and undertaking of the said defendant hitherto been, and still is, ready and willing to marry and take her the said defendant to wife; and although he the said plaintiff, after the making of the said promise

Declaration on a promise of marriage, when plaintiff at defendant's request gave up his full pay in the army on account of her promising to marry him, and retired on half-pay.

and undertaking of the said defendant, to wit, on, &c. tendered and proffered himself to marry and take her to wife, and then and there requested her the said defendant to marry and take him the said plaintiff to husband, according to her aforesaid promise in that behalf: Yet the said defendant, not regarding her said promise and undertaking, so by her in that behalf made as aforesaid, but contriving, &c. did not, when she was so thereto requested as aforesaid, marry and take, nor hath she as yet married or taken, him the said plaintiff to husband; but on the contrary, she the said defendant, when she was so requested as aforesaid, to wit, on, &c. and always hitherto, to wit, at, &c. hath wholly refused, and still refuses so to do, contrary to the tenor and effect of her said promise and undertaking, and in breach and violation thereof. And whereas, &c. &c. (2d Count is on the same day as in the first, to marry generally and positive refusal; 3d Count, the day is on the fifteenth of August, to marry in a month from that day; 4th Count, to marry in about a month from the fifteenth of August; 5th Count, the promise in this Count is on the fifth of September to marry on the fifteenth; 6th Count, on the fifteenth to marry in a few days; 7th Count, money laid out; 8th Count, money had and received, with a common conclusion, until you come to the words "to the damage, &c." in lieu whereof say as following, viz.): And the said plaintiff in fact further says, that by reason and means of the said defendant not having married him the said plaintiff, pursuant to some one of her aforesaid promises in that behalf, but refusing so to do, he the said plaintiff hath not only been damaged and injured by and in respect of the loss of all fortune and other benefit and advantage, amounting in the whole to a large sum of money, to wit, the sum of, &c. which would otherwise have arisen and accrued to him upon and for such marriage, but also in this, to wit, that he the said plaintiff, in contemplation of such marriage, and under the idea, and upon the faith of the same taking effect, did, at the instance and solicitation of the said defendant, resign and withdraw himself from a certain rank and situation which he had and held in his majesty's service, that is to say, the rank, &c. and did retire and hath retired, and at present doth receive the half-pay only of and for such rank and situation, and no more; and the said plaintiff also did lay out and expend, &c. and about certain necessary and unavoidable expences preparatory to such expected marriage, to wit, &c.

V. LAWES.

On a breach of a
promise of mar-
riage.

MIDDLESEX, *ss.* Elizabeth French complains of Thomas Pitcher, being in the custody, &c. of a plea of trespass on the case: for that whereas, on the nineteenth day of November in A. D. 1771, to wit, at Westminster, in the said county of Middlesex, in consideration that the said plaintiff, being then sole and unmarried, at the special instance and request of said defendant, being then also sole and unmarried, had then and there undertaken, and

ASSUMPSIT SPECIAL.—TO MARRY.

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and faithfully promised the said defendant, that she the said plaintiff would intermarry with and take to husband the said defendant, within the space of one month then next ensuing, he said defendant then and there, to wit, on, &c. at, &c. aforesaid, undertook, and faithfully promised the said plaintiff, that he the said defendant would intermarry with and take to wife her the said plaintiff, within the space of one month: And the said plaintiff avers, that she, confiding in the said promise and undertaking of said defendant, so by him made in manner and form aforesaid, hath always from thence hitherto continued and still is sole and unmarried, to wit, at, &c. aforesaid; and although she the said plaintiff was at all times during the said month ready and willing to intermarry with and take to husband him the said defendant, according to the tenor and effect of her promise and undertaking aforesaid; whereof the said defendant had notice: Yet the said defendant, not regarding his said promise and undertaking so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not, nor would, at any time during the said space of one month, intermarry with or take to wife her the said plaintiff, but wholly refused and neglected so to do; and on the contrary thereof, afterwards, intermarried with and took to wife another woman, to wit, &c. aforesaid.

Drawn by MR. TIDD.

WILTSHIRE, *ff.* William Jenkins, late of, &c. esquire, was attached to answer Martha Brooks, widow, in a plea of trespass on the case, &c.; and thereupon the said Martha, by John Lloyd, her attorney, complains; that whereas heretofore, to wit, on the first day of December in the year of Our Lord 1780, at Salisbury in the said county of Wilts, in consideration that the said Martha, who was then and is sole and unmarried, at the special instance and request of said defendant, had then and there agreed, and faithfully promised the said defendant, who then and there alledged and pretended himself to be sole and unmarried, that she the said plaintiff would marry and take the said defendant to husband, he the said defendant then and there, to wit, on said first of December in the year 1780 aforesaid, at Salisbury aforesaid, in said county of Wilts, undertook, and faithfully promised said plaintiff, to marry and take her said plaintiff to wife: And said plaintiff avers, that although she said plaintiff, confiding in the said promise and undertaking of said defendant, so by him in manner and form aforesaid made, hath always, from the making of the said promise and undertaking, hitherto refused to contract matrimony with any other man whatsoever, and has, during all that time, been ready and willing to marry and take to her husband him the said defendant, as the said defendant well knew, to wit, at Salisbury aforesaid, in the county aforesaid: Yet the said plaintiff in fact further saith, that the said defendant, not regarding his promise

Declaration on
breach of a mar-
riage promise;
three Counts.

ad Count, pro-
mise to marry
plaintiff the next
morning.

promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, hath not yet taken to his wife the said plaintiff (although a reasonable time for that purpose hath long since elapsed, and although so to do he the said defendant hath been frequently requested); but he so to do hath always, from the time of the making of his aforesaid promise and undertaking, hitherto wholly refused, and still doth refuse, contrary to the tenor and effect of his said promise and undertaking, and in breach and violation thereof, to wit, at Salisbury aforesaid, in the said county of Wilts: And whereas heretofore, to wit, on the ninth day of December in the year of Our Lord 1780, at Salisbury aforesaid, in the said county of Wilts, in consideration that the said plaintiff, who was then and there sole and unmarried, at the special instance and request of said defendant, had then and there agreed and faithfully promised the said defendant that she the said plaintiff would marry and take said defendant to husband, he said defendant afterwards, to wit, on the said ninth day of December, in the year 1780 aforesaid, at Salisbury, in said county of Wilts, undertook, and faithfully promised said plaintiff, to marry and take her said plaintiff to wife the then next morning (that is to say, on the morning of the tenth day of December, which was in the year 1780 aforesaid): And said plaintiff avers, that although she the said plaintiff, on the morning of the day next after the making of the said last-mentioned promise and undertaking of said defendant, to wit, on said tenth day of December in the year 1780 aforesaid, was ready and willing to marry and take to her husband him the said defendant; whereof the said defendant had due notice, to wit, at Salisbury aforesaid; and although the said plaintiff confiding in the said last-mentioned promise and undertaking of said defendant, so by him in manner and form aforesaid made, hath always, from the making of said last-mentioned promise and undertaking, hitherto refused to contract matrimony with any other man whatsoever, and has, during all that time, been ready and willing to marry and to take to husband him the said defendant, to wit, at Salisbury aforesaid, in the county of Wilts aforesaid: Yet the said plaintiff in fact further saith, that said defendant, not regarding his said last-mentioned promise and undertaking so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said plaintiff in this behalf, did not in or on the morning of the day next after the making of his said last-mentioned promise and undertaking, to wit, on said tenth day of December in the year 1780 aforesaid, marry, nor hath he at any other time whatsoever married or taken to his wife her the said plaintiff (although so to do he the said defendant was requested by said plaintiff, on the said tenth day of December in the year 1780 aforesaid, and often since, to wit, at Salisbury aforesaid, in the county of Wilts); but he so to do on the said tenth day of December in the year 1780, at Salisbury aforesaid, in the county aforesaid, did refuse,
and

and always from thence hitherto hath wholly refused, and still doth refuse, contrary to the tenor and effect of his said last-mentioned promise and undertaking, and in breach and violation thereof, to wit, at Salisbury aforesaid, in the said county of Wilts: And whereas heretofore, to wit, on the twelfth day of December in the year 1780 aforesaid, at Salisbury aforesaid, in said county of Wilts, in consideration that the said plaintiff (who was then and there sole and unmarried), at the special instance and request of said defendant, had then and there agreed and undertaken to marry and take said defendant to husband, he the said defendant then and there, to wit, on the day and year last aforesaid, at Salisbury aforesaid, in the said county of Wilts, undertook, and faithfully promised the said plaintiff, to marry and take her the said plaintiff to wife in a short time then next following: And the said plaintiff avers, that although a long and reasonable time for that purpose hath long since elapsed; and although she the said plaintiff, confiding in the said last-mentioned promise and undertaking of said defendant, so by him in manner and form aforesaid made, hath always, from the time of the making of such promise and undertaking, hitherto refused to contract matrimony with any other man whatsoever, and has, during all that time, been ready and willing to marry and take to her husband him the said defendant, as he the said defendant well knew, to wit, at Salisbury aforesaid, in said county of Wilts: Yet the said plaintiff in fact further saith, that said defendant, not regarding his said last-mentioned promise and undertaking, so by him in manner and form aforesaid made, but contriving, &c. to deceive and defraud said plaintiff in this behalf, hath not yet taken to wife the said plaintiff (although often requested so to do); but he so to do hath always, from the time of the making of his said last-mentioned promise and undertaking, hitherto wholly refused, and still doth refuse, contrary to the tenor and effect of his said last-mentioned promise and undertaking, and in breach and violation thereof, to wit, at Salisbury aforesaid, in the said county of Wilts: wherefore said plaintiff saith she is injured, and hath sustained damages to the value of one thousand pounds, for which she brings her suit, &c.

3d Count, promise to marry plaintiff in a short time.

V. LAWES.

This cause was tried at the assizes at Salisbury, and a verdict for plaintiff, with two hundred pounds damages.

CHESHIRE, ff. J. H. complains of T. S. being, &c.: for Declaration, in that whereas said defendant on, &c. at, &c. in consideration that said plaintiff, at the special instance and request of said defendant, would take to wife one M. S. daughter of said defendant, undertook, and faithfully promised the said plaintiff, to pay unto the said plaintiff the sum of ten pounds: And said plaintiff in fact says, that he confiding in said promise and undertaking of said defendant, he said plaintiff afterwards, to wit, on, &c. at, &c. did take to wife the said M. S.; whereof said defendant afterwards, to wit, on

consideration plaintiff would marry defendant's daughter, he promised to pay him 10l; although plaintiff did marry, &c. he refused to pay, &c.

on same day and year last aforesaid, had notice: Yet said defendant, not regarding, &c. (Common conclusion; pledges, &c.)

MR. WARREN.

Declaration, in consideration plaintiff would marry one D. B. who had a bastard, defendants promised to pay him 7l.; although he married her, they paid him but 49s.

WARWICKSHIRE, ff. William Miles, late of, &c. and Robert King, late of, &c. were attached to answer unto William Betteridge, of a plea of, &c.; and thereupon, &c.: that whereas, at the time of the making of the promise hereafter mentioned, to wit, on, &c. at, &c. a certain discourse was moved and had between said defendants and said plaintiff of and concerning a certain marriage between him said plaintiff and one Dorothy Biggett (which said D. B. then and there had a bastard), then and there proposed by said defendants to said plaintiff to be had and solemnized; and upon that discourse said defendants then and there, in consideration that said plaintiff, at the special instance and request of said defendants, would take to his wife said D. undertook, and then and there faithfully promised said plaintiff, that they said defendants would pay seven pounds of lawful, &c. to said plaintiff: And said plaintiff in fact saith, that he, confiding in said promise and undertaking, at said instance of them said defendants, afterwards, to wit, on same day and year aforesaid, at, &c. aforesaid, took said D. to his wife, and then and there espoused her according to the ecclesiastical laws of this kingdom of England; whereof said defendants then and there had notice; and although said defendants afterwards, to wit, on same day and year aforesaid, at, &c. aforesaid, paid to the said plaintiff forty shillings, in part of the payment of said sum of seven pounds by them to said plaintiff, according to the promises aforesaid, to be made: Yet the said defendants, not regarding their said promise, &c. as to five pounds, residue of the said sum of seven pounds, but contriving, &c. to deceive, &c. said plaintiff in this particular, have not, nor hath either of them, yet paid said five pounds, residue of said sum of seven pounds to said plaintiff (although, &c.); but they to pay the same, or any part thereof, have hitherto wholly refused, and still do, &c. refuse so to do. (Damages twenty pounds; suit, &c.)

SERVICES AND WORKS DONE AND TO BE DONE, TO RENDER SERVICES, PERFORM WORKS, TO SERVE AND EMPLOY, &c.

Declaration against the churchwardens and overseers of the parish of S. by a surgeon and apothecary, for the recovery of a sum of money agreed to be paid to him annually, for his attending the poor, &c. of that parish, and divers other paupers, and also for divers other journeys made out of the parish by plaintiff, at the express order of defendants.

NORFOLK, to wit. J. H. B. complains against G. P. the elder, R. B. W. C. and William R. being, &c.: for that whereas, before and at the time of the making of the promise and undertaking hereinafter next mentioned, and afterwards, the said G. and R. were churchwardens of the parish of S. in the said county

if N. and the said W. C. and W. R. were overseers of the poor of the said parish of S. in the said county, to wit, at T. aforesaid, in the said county: And whereas the said plaintiff before and at the time of the promise and undertaking hereinafter next mentioned, and continually from thenceforth hitherto, hath followed, exercised, and practised the art, mystery, and employment of a surgeon, apothecary, and man-midwife, and still doth follow, exercise, carry on, and practise the said art, mystery, and employment, to wit, at T. aforesaid, in the said county; and the said G. and R. being such churchwardens of the parish-church aforesaid, and the said W. C. and W. R. being such overseers of the said parish of S. as aforesaid, and the said plaintiff so following, practising, and exercising the said art, mystery, and employment of a surgeon, apothecary, and man-midwife as aforesaid, afterwards, to wit, on the first of May 1783, at T. aforesaid, in the said county, it was agreed by and between the said G. R. W. C. and William R. and the said plaintiff in manner and form following, that is to say, the said defendants, as such churchwardens and overseers of the said parish of S. aforesaid, did promise to pay to the said plaintiff the annual sum of . on the following conditions, that is to say, that the said plaintiff should attend the resident poor belonging to the said parish in pharmacy and surgery and occasional midwifery, when it should be thought necessary to call him in; and that if any pauper not belonging to the said parish of S. should become sick or lame, or unavoidably chargeable to the said parish, such pauper should be attended by the said plaintiff in the same manner as if such pauper belonged to the said parish of S.; and that if any certificated pauper, not belonging to the said parish of S. should require medical assistance, the said plaintiff should attend such pauper, and be paid for such medicine and assistance as he might stand in need of by the parish he belonged to, provided it was so understood by and between the said defendants and the said plaintiff that the parishioners of S. were to be at no expence in recovering the payment of such bills for the said plaintiff; and that if the overseers of the poor of the parish of S. aforesaid, for the time being, should order any paupers to be inoculated, that the said plaintiff should inoculate them, and be paid for each person the sum of two shillings and six-pence; and that if the said plaintiff should think proper to call in any assistance in the operative part of his profession, such assistant should be found by him, without any further expence to the said parish of S.; and that if any of the paupers should be afflicted with the itch, the said plaintiff agreed to cure them without any additional expence to the parish aforesaid; and the said agreement being so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at T. aforesaid, in the said county, in consideration that the said plaintiff, at the special instance and request of the said defendants, had then and there undertaken, and faithfully promised, to do, perform, and fulfil every thing in the said agreement contained on the part and behalf of the said plaintiff, they the said defendants undertook, and to the said plaintiff then and there faithfully promised, to do, perform, and

and fulfil every thing in the said agreement contained on the part and behalf of the said defendants to be done, performed, and fulfilled: And the said plaintiff in fact says, that he the said plaintiff, relying on the said promise and undertaking of the said defendants, and in pursuance of the said agreement, after the making of the said agreement, and continually from thence from time to time, and at all times during the space of one year from thence next ensuing, and until and upon the first day of May 1784, he the said plaintiff did attend the resident poor belonging to the said parish of S. in pharmacy and surgery and occasional midwifery, when it was thought necessary to call him in; and that from time to time, during all the said time, he did attend, if called in, each and every pauper not belonging to the said parish of S. that did become and were sick or lame, or unavoidably chargeable to the said parish of S. in the same manner as if the same paupers belonged to the said parish of S.; and that he the said plaintiff did likewise from time to time, and at all times during the said time, attend all and every such certificated paupers not belonging to the said parish, that came and were within the same, that required and stood in need of medical assistance, and called him in for that purpose; and that he the said plaintiff did from time to time, during all the said time, inoculate all such paupers as the overseers for the time being, during the said time, did order and direct to be inoculated; and that he the said plaintiff did from time to time, and at all times during all the said time, cure, without any additional expence to the said parish of S. all such paupers belonging to the said parish as were afflicted by the itch; and that he the said plaintiff did always from the time of the making of the said agreement, for and during all the said time, do, perform, and fulfil every thing in the said agreement contained, on the part and behalf of him the said plaintiff to be done, performed, and fulfilled, to wit, at T. &c.; whereof the said defendants, afterwards, to wit, on, &c. at, &c. had notice: And the said plaintiff in fact says, that the sum of of the said annual sum for one year, ending at and upon the said first day of May 1784, on that day in that year, became due and in arrear from the said defendants to the plaintiff, which the said defendants ought to have paid and satisfied to the said plaintiff, according to the form and effect of the said agreement, and the said promise and undertaking by them so made as aforesaid, to wit, at T. &c. (2d Count, for work and labour as surgeon and apothecary, in and about the curing of paupers of the parish, and divers other paupers, of divers diseases; 3d Count, *quantum meruit*; 4th Count, *quantum meruit*, for healing the said paupers of divers fractures, sores, &c.; 5th Count, for journies, &c. in and about the affairs, &c. of defendants; 6th Count, *quantum meruit*; common Counts; and breach.) *Drawn by MR. CROMPTON.*

Defendants pleaded a tender of 30l.; and on the trial of the cause, plaintiff had a verdict, and much greater damages.

If defendants ordered plaintiff to go out

of the parish, though it is not within the agreement, they will be liable to pay him upon some or other of the above Counts.

G. C.

KENT,

KENT, to wit. R. P. against W. M.; for that whereas, Declaration against defendant before the making of the promise and underraking of the said defendant hereinafter next mentioned, to wit, on, &c. at, &c. in, &c. for non-payment of a sum of money, according to his promise, for plaintiff's discharging the son of defendant from his apprenticeship, one William the younger, the son of the said defendant, was put apprentice, and thereupon became apprentice, to the said plaintiff, he the said plaintiff being a barber, to be instructed in the trade, mystery, and business of a barber, from the same day and year aforesaid, for the full end and term of seven years then next following: And whereas also afterwards, to wit, on, &c. at, &c. in, &c. he the said William the younger, remaining and continuing undischarged from his aforesaid apprenticeship; and long before the expiration thereof, in consideration that the said plaintiff, at the special instance and request of the said defendant, with the consent, assent, and agreement of the said William the younger, would release and discharge the said William the younger from his aforesaid apprenticeship, he the said defendant undertook, and then and there faithfully promised the said plaintiff to pay to him the sum of twenty-five guineas: And the said R.P. in fact says, that although he the said plaintiff did afterwards, to wit, on, &c. at, &c. release and discharge the said William the younger from his aforesaid apprenticeship, for the remainder of the term of the aforesaid apprenticeship; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice: Yet the said defendant, not regarding, &c. but contriving, &c. hath not yet paid the said plaintiff the said sum of twenty-five guineas, or any part thereof, although often requested so to do; but to pay the same, or any part thereof, the said defendant hath hitherto wholly refused, and still doth refuse, contrary to the form and effect of the said promise and undertaking so by him made as aforesaid: And whereas also afterwards, and before the making of the promise and undertaking hereinafter next mentioned, to wit, on, &c. at, &c. he the said William the younger was apprentice to the said Robert in a certain other trade and business, before then bound by a certain indenture of apprenticeship for the term of seven years, whereof divers, to wit, two years were then to come and unexpired of the last aforesaid apprenticeship before the end and expiration thereof; and the said William the younger so being such apprentice as last aforesaid; and the said apprenticeship so being unexpired as last aforesaid, in consideration that the said plaintiff, at the like special instance and request of the said defendant, had released and discharged the said William the younger, by and with his consent, from his last aforesaid apprenticeship, for the remainder of the term of the last aforesaid apprenticeship, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him the sum of twenty-five guineas, whenever he the said defendant should be thereunto requested: Yet, &c. [as before]. (Money Count; account stated; and common breach.)

Drawn by MR. GRAHAM.

FOR

For not paying plaintiff a guinea a day for taking a journey and transacting business.

FOR that whereas on, &c. in consideration that the said plaintiff, at the special instance and request of said defendant, would take and perform a journey, to wit, from London to the Isle of Man, there, to wit, at the said island; to transact certain business for the said defendant, he the said defendant then and there undertook, and faithfully promised the said plaintiff, to pay him for the same one guinea by the day, from the day inclusive he should set forwards from London to the said island, and during his stay there, and until he should arrive at Whitehaven, in Cumberland, from the said island, and three guineas over and above for his expences to and from the said island: And the said plaintiff avers, that he, confiding in the said promise and undertaking of the said defendant, he the said plaintiff afterwards, to wit, on, &c. did set out on his said journey, to wit, from London aforesaid to the said island of Man, and took and performed the said journey, and transacted the said business of the said defendant there at the said island; and afterwards, to wit, on, &c. arrived at W. aforesaid from the said island; and by reason thereof, the said defendant, according to his promise and undertaking aforesaid, became liable to pay, and ought to have paid, to the said plaintiff fifty-six guineas; to wit, fifty-three guineas for the said fifty-three days during the said journey, and three guineas over and above for his said expences; to wit, at, &c.; of all which said premises the said defendant afterwards, &c. had notice: Yet, &c.

Drawn by MR. WARREN.

Declaration on an agreement entered into by several copyholders to try an action with one A. B. as whether they had not a right to take faggots off a common; the expences of which they were equally to bear: the action was tried, and defendant refuses to pay his share.

SUSSEX, *ss.* William Gouldsmith and John Ruffel complain of Thomas Baker, being, &c.: for that whereas, before, and at the time of the making of the agreement hereafter next mentioned, and long afterwards, the said plaintiffs and defendant, and also J. G. &c. &c. &c. (the other parties to the agreement), claimed as copyholders within the parish of, &c. of the manor of L. in the county of S. aforesaid a right, as appertaining to them respectively, of taking certain parcels respectively of certain wood or faggots, which at the time of the making of the agreement hereafter mentioned had been cut down by one Josias Smith in a certain wood called Tilsmore Wood, within the said manor, in the parish of, &c. in, &c. and faggotted by the said J. S. and they the said plaintiffs and defendant, &c. &c. &c. were; at the time of the making the agreement hereafter mentioned, about to assert their respective rights, and for that purpose intended respectively to take some of the said faggots, and it was then apprehended by the said plaintiffs and defendant, and, &c. &c. &c. that the said J. S. might sue them, or some of them, at law for the taking thereof: and thereupon, whilst the said plaintiffs and defendant, and &c. &c. &c. so claimed such right; to wit, on, &c. at, &c. in, &c. it was agreed by and between the said plaintiffs and defendant, and, &c. &c. &c. and they did consent and agree with each other as copyholders within the said manor of W. and manor of L. in county of S. aforesaid, to support, by an equal share of expence, that is to say, according

to as many claims as each man should be possessed of, if any should so claim in the recovery of their rights of such wood or faggots which were then cut and faggotted, and sold to several people by the aforesaid J. S. or any other person whatsoever, from the said wood called, &c. in the said parish of, &c. in, &c.; and further, that no one of them would take any other faggots than those called kiln faggots; and at the same time would contribute share and share alike, according to as many claims as each man should be possessed of, towards any suit or suits at law that should be commenced against any of them by the said J. S. or any other person whatsoever; and the said agreement being so made, they the said plaintiffs afterwards, to wit, on, &c. at the special instance and request of said defendant, undertook, &c. &c. (mutual promises): And the said plaintiffs in fact say, that they the said plaintiffs, confiding in the said promise and undertaking of the said defendant by him made as aforesaid, after the making the said agreement, and of the promise and undertaking of the said defendant as aforesaid, and whilst they the said plaintiffs and defendant, and the said, &c. &c. &c. so had such claims as aforesaid, to wit, on, &c. they the said plaintiffs, under colour of their respective claims, did take divers, to wit, five hundred faggots of the faggots aforesaid, the whole of the said faggots so by them taken, being those called kiln faggots, according to the tenor of the agreement aforesaid, in order to assert their right to the said faggots, according to the tenor of the said agreement, and for that purpose did necessarily enter into the said woods, called, &c. and in so doing did necessarily break open a certain gate, and a certain fence belonging to the said wood, and do some damage in the said wood to the said J. S. doing as little damage there as they possibly could on that occasion to the said J. S. to wit, at, &c.: And the said plaintiffs further say, that thereupon afterwards, to wit, in Michaelmas term, in the sixteenth year of the reign of, &c. the aforesaid J. S. impleaded the said plaintiffs in the court of our said lord the now king, before the king himself (the said court then and still being held at Westminster, in the county of Middlesex), in a certain plea of trespass, to the said J. S. his damage of five hundred pounds, of and for the very same identical taking and carrying away of the said faggots last-mentioned, and for what was by the said plaintiffs then and there necessarily done on that occasion as aforesaid, to wit, in the said assertion of the claims aforesaid of the said plaintiffs: And the said plaintiffs further say, that they duly, and in the best manner they could, pleaded to the said action of the said J. S. and defended their claims aforesaid, and what they had so necessarily done in asserting their said claims, to wit, at, &c.: And the said plaintiffs further say, that such proceedings were thereupon had in the same court of our said lord the king, before the king himself, at Westminster, in that plea, that the said J. S. afterwards, to wit, in, &c. by the consideration and judgment of that court, recovered against the said plaintiffs one hundred pounds, which in and by the said

court of our said lord the king, before the king himself, were adjudged to him the said J. S. for his damages which he had sustained as well on occasion of the committing the trespass specified in the plea aforesaid, as for his costs and charges by him laid out about his suit in that behalf, whereof the said plaintiffs were convicted, as by the record and proceedings thereof, remaining in the said court of our said lord the king, before the king himself, at Westminster aforesaid, reference being, &c. &c.: And the said plaintiffs further say, that they, on occasion of the premises aforesaid, were afterwards, to wit, on, &c. necessarily forced and obliged to pay, lay out, and expend, and did pay, &c. a large sum of money, to wit, the sum of four hundred pounds, that is to say, in their defence aforesaid, and in the payment of the damages, costs, and charges aforesaid, in form aforesaid-recovered, which was their necessary expences on the occasion aforesaid, and incurred according to the tenor of the aforesaid agreement, to wit, at, &c.: And the said plaintiffs further say, that according to the tenor of the agreement aforesaid, the share of the said T. B. according to his claims, to wit, of the claims of which he was possessed at the time of the agreement aforesaid, and of the recovery aforesaid, amounted to a large sum of money, to wit, the sum of forty pounds; by means of which said several premises, and according to the tenor of the agreement aforesaid, and of the said promise and undertaking of the said defendant, he the said defendant afterwards, to wit, on, &c. became liable to pay, and ought to have paid, to the said plaintiffs, the said sum of forty pounds; of all which premises the said defendant afterwards, to wit, on, &c. had notice: Yet, &c. (Breach in non-payment of said forty pounds): And whereas, &c. (Money laid out, lent, had, and received, and an account stated; and common conclusion to two last Counts.)

J. MORGAN.

Declaration, in consideration plaintiff would assist defendant, and write letters to one E. M. who defendant courted, he promised plaintiff if he married her, to pay him 20l. Defendant married her, but refused to pay the 20l.

MIDDLESEX, to wit. Richard Edwards, a debtor of our lord the king, comes before the barons of his exchequer, the twentieth day of November, in this term, by his attorney, and complains by bill against C. Eastor, present here in court, this, &c. of a plea of trespass on the case: for that whereas, before and at the time of the making of the promise and undertaking of the said defendant hereafter next mentioned, to wit, on, &c. the said defendant courted, and was paying his addresses to one E. M. with a view to marry with her, and in the course of such courtship the said plaintiff had, at the special instance and request of the said defendant, written and composed divers letters for the said defendant, and been at other trouble to assist and bring about such marriage for him said defendant with the said E. M.: and thereupon, afterwards, to wit, on, &c. in consideration of such trouble and assistance so had and given by the said defendant as aforesaid, and also in consideration that the said plaintiff, at the like special instance and request of the said

said defendant, would *continue to assist* the said defendant (1) *in* (1) "in pro-
manner aforesaid, until the said marriage should take place, he the curing between
 said defendant undertook, &c. the said plaintiff to pay him the sum him the said de-
 of (2) *twenty pounds* of lawful, &c. (3) *in case* the said mar- fendant, and a
 riage should so take place between him the said defendant and the said certain other
 E. M. : And the said plaintiff in fact saith, that he, confiding person called
 in the said promise and undertaking of the said defendant, did, from B. M."
 and after the making thereof, and until the said marriage *between* (2) "tol."
him and the said E. M. took place (4) *as hereafter mentioned,* (3) "whenever
continue to assist, and did accordingly assist the said defendant in such after"
manner as aforesaid, and in order to bring about and procure the (4) "assist him
 said marriage; and that such marriage did afterwards, and before in procuring"
 the exhibiting of the bill of the said plaintiff *against the said de-*
fendant, to wit, on, &c. take place, and was had and solemnized be- (5) "last-men-
 tween him the said defendant, and the said (5) E. M.; whereby, and tioned person
 by reason of which said several premises, and according to the afore- called"
 said promise and undertaking of the said defendant, he the said de-
 fendant then and there became liable to pay, and ought to have
 paid, to the said plaintiff, the said twenty pounds, so promised and
 agreed to be paid to him as aforesaid; whereof the said defendant,
 afterwards, to wit, on, &c. had notice. And whereas, &c. (2d
 Count like the first, omitting what is in italic, and inserting what
 in margin); two Counts for work and labour; money had, &c.;
 account stated; and common conclusion.

V. LAWES.

MIDDLESEX, to wit. John Miller was attached to answer Declaration a-
 unto John Terry, in a plea of, &c. : that whereas the said de- gainst defendant
 fendant heretofore, to wit, on, &c. at, &c. caused to be printed and for not paying
 published in a certain public newspaper, commonly called "The plaintiff a sum
 Daily Advertiser," a certain advertisement, dated from a certain of money,
 public-office, in Bow-street, the twenty-sixth day of, &c. reciting, which he of-
 That whereas on, &c. then last past, about one o'clock, the fered to give by
 dwelling-house of the said J. M. (who in the said advertisement was public adver-
 described as Dr. M. of Maynard's Farm, near Waltham Abbey, tisement, as a
 in Essex) was burglariously broken open by several persons, sup- reward for ap-
 posed to be four in number, who, after plundering the house of cer- prehending
 tain things in the said advertisement particularly specified (that is some thieves,
 to say, a silver cup, &c. &c.), in the most inhuman, barbarous, and who had broke
 and cruel manner, cut and wounded the said J. M. to so dreadful a de- open his house.
 gree, that his life was greatly despaired of: and by the said adver-
 tisement, he the said J. M. did then and there, to wit, on, &c.
 at, &c. promise and undertake that whoever would apprehend the
 said offenders, or either of them, or give such notice to the public-
 office aforesaid as might be the means of apprehending them,
 should receive twenty pounds reward, on his or their conviction,
 from him the said J. M. : And the said plaintiff avers, that he,
 confiding in the promise and undertaking of the said defendant, so

- (1) "give such notice at the said public office, that" by him in manner and form aforesaid made, did afterwards, to wit, on, &c. at, &c. (1) *apprehend* divers persons, to wit, one A. B. one C. D. and one E. F. who had so as aforesaid been and *then* were guilty of the said offence in the said advertisement mentioned;
- (2) "whereby, by and through the means of such notice, so by him the said plaintiff given as aforesaid, afterwards, to wit, on, &c. at, &c. apprehended: And the said plaintiff in fact further saith," (2) *And* that the said A. B. C. D. and E. F. were afterwards, to wit, at the assizes held at Chelmsford, in and for the said county of Essex, on, &c. in due manner, and according to due course of law, convicted of the said offence; whereof the said J. M. afterwards, to wit, on, &c. had notice, and thereby then and there became liable to pay to the said plaintiff the said reward of twenty pounds in the said advertisement (3) *mentioned*, according to the tenor and effect of his said promise and undertaking in that behalf: Yet the said defendant, not regarding his aforesaid promise and undertaking in this behalf made as aforesaid, but contriving, &c. &c. in this behalf, hath not as yet paid the said reward of twenty pounds in the aforesaid advertisement mentioned, or any part thereof, to the said plaintiff, although to do this he the said defendant was requested by the said plaintiff afterwards, to wit, on, &c. and often afterwards, to wit, at, &c. but he (4) *to pay the same, or any part thereof, to the said plaintiff* hath hitherto wholly refused, and still refuses to do: And whereas, &c. &c.: (this Count like the first, only omitting what is in italic, and inserting what is in the margin. Add two more Counts for work and labour; money laid out, &c. &c.; account stated; and breach to the four last Counts.)
- (4) "to do" 2d Count.

V. LAWES.

MIDDLESEX. *ff.* Philip Bullock against Thomas Phelp, &c.: for that whereas heretofore, to wit, on, &c. the said Philip was purser of and belonging to a certain vessel and ship of war, then in the service of our lord the now king, called the *Thetis*, and the said Thomas was purser of and belonging to a certain other vessel or ship of war, then in the service of our said lord the now king, called the *Brune*, to wit, at Westminster in the county of Middlesex; and the said Philip and Thomas being so respectively in the service of our said lord the now king as aforesaid, and having also agreed to exchange their said situations with each other, it was afterwards, to wit, on, &c. at, &c. further agreed by and between them the said Thomas and Philip, that the said Thomas, on his being warranted by the admiralty purser of the said ship or vessel called the *Thetis*, should pay to the said Philip two hundred pounds sterling, and twenty pounds a year for the first two years, and fifty pounds for the third year, provided the said ship or vessel called the *Thetis* should be in commission for that length of time, and the said ship or vessel called the *Brune* should remain in the state of commission; and that the said Philip should pay to the said Thomas, on his being warranted by the admiralty purser of the said ship or vessel called the *Brune*, two hundred pounds sterling, and twenty pounds a year for the first two years, and fifty pounds for the third year, provided the said ship or vessel called the *Brune* should be in commission for that length of time, and the said ship or vessel called the *Thetis* should remain in the state of commission; and that if the ship which defendant was to quit to plaintiff should remain also in commission, the agreement was then to be void; the ship which plaintiff quitted remained in commission; on the contrary, that of defendant was laid up in ordinary; defendant paid part of the money, but refuses to discharge the balance.

of

of ordinary; but that should the said ship or vessel called the Brune be commissioned, then the said yearly salary should cease: and the said agreement being so made as aforesaid, afterwards, to wit, on, &c. at, &c. in consideration of such agreement, and also in consideration that the said Philip, at the special instance and request of the said Thomas, had then and there undertaken, and faithfully promised the said Thomas, to perform and fulfil the said agreement in all things therein contained, on the part and behalf of him the said Philip to be performed and fulfilled, he the said Thomas undertook, and then and there faithfully promised the said Philip, to perform and fulfil the said agreement in all things therein contained, on the part and behalf of him the said Thomas to be performed and fulfilled: And the said Philip in fact saith, that although he the said Philip, confiding in the said promise and undertaking of the said Thomas, did, after the making thereof, to wit, on, &c. at, &c. in, &c. resign and remove from his said situation of purser of and on board the said ship or vessel, called the Thetis, for the purpose of the said Thomas succeeding him therein, according to their aforesaid agreement in that behalf; and although he the said Thomas was thereupon then and there warranted by the admiralty purser of the said ship or vessel called the Thetis, in the place and stead of him the said Philip; and although the said ship or vessel called the Thetis remained and was in commission from thence continually, for a long space of time, to wit, for and during and until the end and expiration of the said three years in the said agreement mentioned, which are long since expired; and although the said ship or vessel called the Brune was not, during that time, commissioned, but remained and continued in the state of ordinary; whereof the said Thomas had notice; and whereby the said Philip became and was entitled to have and receive from the said Thomas the said two hundred and ninety pounds in the said agreement mentioned, according to the tenor and effect of the said agreement; and although he the said Thomas hath paid to the said Philip the said sum of two hundred pounds in the said agreement mentioned, together with a part, to wit, the sum of thirty-nine pounds one shilling of the said money so by the said agreement agreed to be paid to him by such instalments or yearly payments as aforesaid; and although he the said Thomas hath been frequently requested to pay unto him the said Philip the residue of such money, amounting in the whole to a large sum of money, to wit, the sum of fifty pounds nineteen shillings, according to the tenor of his aforesaid agreement in that behalf, to wit, at, &c.: Yet the said Thomas, not regarding such agreement, nor his said promise and undertaking in that behalf, but contriving, &c. the said Philip in this behalf, hath not as yet paid to him the said Philip the said residue of the said money in the said agreement mentioned, or any part thereof; but he so to do hath hitherto wholly refused, and still refuses, contrary to the tenor and effect of the said agreement, and of his aforesaid promise in that behalf, and in breach and violation thereof, to wit, at, &c. And whereas the

Mutual pro-
mises.

said Thomas heretofore, to wit, on, &c. at, &c. in, &c. according to the custom of merchants, &c. &c. (go on for a bill of exchange, drawn by the said Thomas upon one Benjamin Robertson, for twenty-one pounds, but who refused to accept it, &c.; money lent and advanced; ditto laid out and expended; ditto had and received; account stated; and common conclusion.)

V. LAWES.

Plaintiff bought some cattle of some of defendant's tenants, that were distrained; defendant promised to pay plaintiff the money he gave for the same if he would deliver them again to the tenants; one dying in plaintiff's possession, he was to allow for it.

—, ff. C. A. complains of R. L. &c. of a plea of trespass on the case: for that whereas, at the time of the making of the promise and undertaking of the said R. L. hereafter next mentioned, and for a long time, to wit, for the space of one whole year then last past, A. G. T. C. W. C. E. U. and J. A. were parishioners, and each and every of them was a parishioner of and in the parish of L. in the county of N. aforesaid, and during all that time severally held and occupied lands and tenements lying and being in the said parish, as tenants thereof respectively to the said R. L.; and the said A. G. &c. so being severally parishioners of and in the said parish, and so severally holding and occupying lands and tenements lying and being in the said parish, as tenants thereof respectively to the said R. L. before the time of the making of the promise and undertaking of the said R. L. hereafter next mentioned, to wit, on, &c. at the parish aforesaid, one cow of the said A. G. was distrained and taken by distress on the said lands and tenements so holden by the said A. G. by the then overseers of the poor of the said parish, for the sum of one pound seven shillings and sixpence assessed, and which the said A. G. as occupier and possessor of his said lands and tenements, for and towards the maintenance and relief of the poor of the said parish; and ten pigs of the said T. C. were also distrained and taken by distress on the lands and tenements so holden by the said T. C. by the then overseers of the poor of the said parish, for one pound seventeen shillings and sixpence assessed on him the said T. C. as occupier and possessor of his said lands and tenements, for and towards the maintenance and relief of the poor of the said parish; and eight sheep of the said W. C. (as before, &c.), for twenty shillings assessed, &c.; and six lambs of the said E. U. &c. for five shillings assessed, &c.; and three calves of the said J. A. for seven shillings and sixpence assessed, &c.; all which said cattle, after the said distresses had been so made and taken as aforesaid, and before the making of the promise and undertaking of the said R. L. hereafter next mentioned, to wit, on the ninth of February in the year aforesaid, at L. aforesaid, were duly sold, under the said distresses, to the said C. A. that is to say, the said cow of A. G. for, &c. (so for every one of the cattle, and then go on), in the whole amounting to nine pounds fourteen shillings; of all which said premises the said R. L. afterwards, to wit, on the same day, &c. had notice: and thereupon, afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, in consideration that the

said C. A. at the special instance and request of the said R. L. would deliver up to the said R. L. the said respective tenants' respective cattle so distrained from them respectively, except one of the said sheep of the said W. C. so distrained, which had, after the distress so taken, died, he the said R. L. then and there undertook, and faithfully promised the said C. A. to pay him the said money for which the said cattle so distrained as aforesaid were so sold to the said C. A. allowing thereout for the said sheep which had so died as aforesaid: And the said C. A. further says, that he, confiding in the said promise and undertaking of the said R. L. he the said C. A. afterwards, to wit, on the same day and year last aforesaid, at L. aforesaid, delivered up to his the said R. L.'s respective tenants the said respective cattle so respectively distrained from them as aforesaid, except the said sheep which so died as aforesaid; whereof the said R. L. then and there had notice; and although the said C. A. hath always hitherto been ready and willing to allow out of the said sum of nine pounds fourteen shillings for the said sheep which so died as aforesaid the value thereof, to wit, seven shillings, to wit, at L. aforesaid; whereof the said R. L. then and there had notice; and although the said sheep, so dead as aforesaid, was not worth more than seven shillings: Yet the said R. L. not regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said C. A. in this behalf, hath not yet paid to the said C. A. the money so payable to the said C. A. by the said R. L. according to his promise and undertaking aforesaid, or any part thereof, although to do this the said R. L. afterwards, to wit, on the same day and year last aforesaid, and very often afterwards, at L. aforesaid, was requested by the said C. A.; but he to do this hath hitherto wholly refused, and still refuses. And whereas (shew the distress and sale as before to this mark +, only instead of promise say agreement, and then go on from the mark thus). And whereas, on the ninth day of February in the year aforesaid, at L. aforesaid, a certain discourse was moved and had by and between the said R. L. and the said C. A. of and concerning the said last-mentioned distresses and sale, and there being one of the said sheep so distrained from the said C. W. as last aforesaid then dead, it was thereupon agreed by and between the said C. A. and the said R. L. that the said C. A. should deliver up the said R. L.'s said respective tenants the said respective cattle so distrained from them respectively as last aforesaid, except the said one sheep so distrained from the said W. C. as last aforesaid, which was so dead; and that the said R. L. should pay to the said C. A. the said nine pounds fourteen shillings, being the price at which the said C. A. had so bought the said cattle; and that the said C. A. should make satisfaction to the said W. C. for the said sheep which had so died as last aforesaid: And the said agreement being so made, afterwards, to wit, on the same day and year last aforesaid (mutual promises); and although the said C. A. in pursuance of the said agreement, afterwards, to wit, on, &c.

did deliver up to the said R. L.'s respective tenants the said respective cattle so distrained from them respectively as last aforesaid, except the said one sheep so distrained from the said W. C. which was so dead, and has always hitherto been ready and willing, and still is there ready and willing, to make satisfaction to the said W. C. for the said sheep which had so died as last aforesaid; of all which said premises the said R. L. afterwards, on, &c. had notice: Yet the said R. L. not regarding, &c. for the nine pounds fourteen shillings. (3d Count as the last, only to pay the plaintiff the monies so assessed on the said several tenants, together with the charges of the said distresses. 4th Count, as last aforesaid, duly to pay the plaintiff the monies so assessed on the said several tenants, and every thing else to the plaintiff's satisfaction. 5th Count, as last aforesaid, duly to pay every thing to his, U. A.'s, satisfaction. 6th and 7th Counts, *indbitatus assumpsit* and *quantum meruit* for divers cattle, goods, wares, and merchandizes sold and delivered to defendant. 8th and 9th Counts, for other cattle, &c. bargained and sold to defendant. 10th and 11th Counts, another for divers other cattle, &c. before then sold to the said defendant, and by virtue of that sale delivered to the said A. G. at the request of the said R. L. and for divers other cattle, &c. before then sold to the said R. L. and by virtue of that sale delivered to T. C. and for divers others, &c. W. C. E. U. and J. A. 12th Count, money expended, &c. 13th Count, money had and received. Common conclusion. Add pledges.)

Drawn by MR. WARREN.

Declaration in
K. B. for money
promised to
be paid plaintiff
if he would go
on with the cure
of a poor boy
who had fallen
under the
wheels of a
waggon.

HERTFORDSHIRE, to wit. T. L. complains of T. A. being, &c. for this: that whereas the said plaintiff, on, &c. and long before, did exercise, and still doth exercise, the art, occupation, or business of a surgeon, to wit, at Ross in the said county of H. and the said defendant, on, &c. was one of the churchwardens and overseers of the poor of the parish of Beguildy in the county of Radnor, and one R. M. was the other churchwarden of the said parish of B.: And whereas, on, &c. a certain poor boy of and belonging to the said parish of B. had fallen under the wheels of a certain waggon, and thereby received divers bruises, fractures, and wounds, and then and there laboured under great pains and infirmities, and the said plaintiff had then and there dressed the said wounds in order to cure the same, he the said defendant then and there requested the said plaintiff to go on with the cure of the said boy; and in consideration that the said plaintiff, at the special instance and request of the said defendant would go on with the cure of the said boy, undertook, and then and there faithfully promised the said plaintiff, that if the said boy did belong to the said warden of the said parish of B. he the said defendant would pay to the said plaintiff so much money as he therefore reasonably deserved to have for his cure of the aforesaid boy: And the said plaintiff avers, that the said boy then and there belonged to the said parish of B. and

was

was legally settled in the said parish; and that the said plaintiff did then and there go on with and perfect the cure of the said boy, and for the said cure deserved to have the sum of twenty-two pounds, to wit, at, &c. whereof the said defendant afterwards, to wit, on, &c.—a certain other poor boy of and belonging to the aforesaid parish, &c. had received divers wounds and bruises, and then and there laboured under great pains and infirmities, and the said plaintiff had then and there dressed the said wounds in order to the cure of the same, he the said defendant, in consideration that the said plaintiff would go on with the cure of the said last-mentioned boy, undertook, &c. (as before). (Averment that he did go on and perform the cure of the said last-mentioned boy, and that he therefore deserved, &c. as before; *indebitatus assumpsit* and *quantum meruit* for work and labour as a surgeon; common conclusion; pledges, &c.)

J. YATES,

This declaration was drawn by Mr. Yates; and Mr. Warren advised the general issue to nonsuit plaintiff, because such promise was made as one of the parish officers, and therefore it should have been laid jointly by both.

CITY and COUNTY of the CITY of NORWICH, Declaration against a servant for leaving his place before the expiration of the time for which plaintiff had hired him, and without giving plaintiff warning.
to wit. T. Jones, esquire, complains of A. F.: for that whereas, on the third May 1787, at the city of N. aforesaid, in the county of the same city, and within the jurisdiction of this court, it was agreed by and between the said T. and the said A. that the said A. should, on the Saturday then next following, enter into and upon the service of him the said T. and him, as a menial servant, should serve continually for and during the term of one whole year, commencing from the Saturday then next following, and that the said T. should pay to the said Ann, for such her service for and during the term of such one year, the price or sum of ; and the said agreement being so made as aforesaid, afterwards, to wit, on the same day and year aforesaid, at, &c. and within, &c. in consideration that the said T. at the special instance and request of the said A. had undertaken, and then and there faithfully promised the said A. well and truly to do, observe, perform, fulfil, and keep the said agreement, in all things therein contained, on the part and behalf of the said Thomas to be observed, done, performed, fulfilled, and kept, she the said A. undertook, and to the said Thomas then and there faithfully promised, well and truly to observe, do, perform, fulfil, and keep the said agreement in all things on the part and behalf of the said Ann to be observed, done, performed, fulfilled, and kept: And the said T. in fact saith, that although the said Ann, afterwards, and after the making of the said agreement, and on the Saturday next after the making of the said agreement, to wit, on the fifth May 1787, at, &c. and within, &c. did enter into the service of the said T. as such menial servant as aforesaid; and although the said A. did remain and continue in the service of the said Thomas for a short space of time,

to

to wit, for the space of two days then next following; and although the said T. received the said Ann, and the said Thomas was ready and willing to have kept, and was then and there desirous of keeping, the said Ann in his said service, and of having her continue therein from thence until the expiration of the said space or term of one whole year as aforesaid, if the said A. would have so long stayed and continued therein: Yet the said A. not further regarding her said promise and undertaking so by her made as aforesaid, did not nor would remain and continue in the said service of the said Thomas for and during the residue and remainder of the said year, although often requested so to do, but afterwards, and before the expiration of the said year, and whilst the same was unexpired, to wit, on the seventh May 1787, at, &c. within, &c. deserted, left, and departed from the service of him the said T. without the licence or consent, and against the will of the said T. and hath ever since continued wholly apart and absent therefrom, to wit, at, &c. and within, &c. contrary to the form and effect of the promise and undertaking by the said A. in that behalf made as aforesaid; by reason of which said premises the said T. hath been, and was put to great trouble and expence in and about the hiring and procuring another servant in the room of the said A. and to do such work as the said Ann, according to the form and effect of the said agreement, and of her said promise and undertaking so by her made as aforesaid, ought to have done, to wit, at, &c. and within, &c. And where-
3d Count, to
give notice.
as also afterwards, to wit, on the day of 1787, at, &c. and within, &c. it was agreed by and between the said T. and the said A. that the said A. should, on the Saturday then next following, enter into and upon the service of the said T. and that the said T. should pay to the said A. for such her service, at and after the rate of per annum; and that if either of them the said T. or the said A. should be minded and willing to put an end to the service of the said Ann, that such party so minded and willing should give reasonable notice and warning of such intentions to the other; and the said last-mentioned agreement being so made as aforesaid, &c. (mutual promises as before): And the said T. in fact says, that although afterwards, and after the making of the said last-mentioned agreement, to wit, on the fifth May 1787, at, &c. and within, &c. the said A. did enter into the service of the said T. as such menial servant as aforesaid; and although the said Ann did remain and continue in the service of the said Thomas for a short space of time, to wit, for the space of two days then next following; and although the said Thomas received the said A. and the said T. was ready and willing to have kept, and was then and there desirous of keeping, the said Ann in his said service: Yet the said Ann, not further regarding the said agreement, and her said promise and undertaking so by her made as last aforesaid in that behalf, did not nor would remain and continue in the said service of the said Thomas for a longer time than two days, although often requested so to do, and although no warning or notice was
given

given by the said T. to the said A. for the said Ann to leave or quit the service of him the said T. but afterwards, to wit, on the of May, at, &c. and within, &c. deserted, left, and departed from the service of him the said T. without the licence or consent, and against the will of the said T. and without giving any notice or warning of her intention to leave the service of the said T. and hath ever since continued wholly apart and absent therefrom, to wit, at, &c. within, &c. contrary to the form and effect of the said last-mentioned agreement, and the said promise and undertaking in that behalf, &c. (pursuing the first Count to the end). And whereas also, afterwards, to wit, on the day of May 1787, at, &c. and within, &c. in consideration that the said Thomas, at the like special instance and request of the said A. had retained the said A. as servant of the said Thomas, for and during the space or term of one whole year then next following, at and for the price or wages of pounds, to be therefore paid by the said Thomas to the said A. and had thereupon received the said A. into his service, as such servant as aforesaid, the the said A. undertook, and to the said Thomas then and there faithfully promised, to remain and continue in the service of the said Thomas for the space of one whole year: And the said Thomas in fact says, that although she the said Ann remained and continued in the service of the said Thomas for a short space of time, to wit, for the space of two days then next following, to wit, at, &c. within, &c. Yet the said Ann, not further regarding her said last-mentioned promise and undertaking so by her made as last aforesaid, but contriving, &c. in this behalf, hath not remained and continued in the service of the said Thomas, as such servant as aforesaid, for all or any part of the residue of the space of one year, although often requested so to do; but on the contrary thereof, afterwards, to wit, on the said fifth May 1787, at, &c. within, &c. deserted, left, and departed from the said service of him the said T. without the licence or consent, and against the will of the said Thomas, and hath ever since continued wholly apart and absent therefrom, to wit, at, &c. within, &c. contrary to the form and effect of the said promise and undertaking by the said Ann in that behalf made as last aforesaid; by reason whereof the said T. hath been put to great trouble and expence in and about the hiring and procuring another servant in the room of the said Ann, and hath been otherwise greatly injured and prejudiced, to wit, at, &c. and within, &c. (Money paid, &c. lent, &c. and had, &c.)

3d Count, retained on a yearly hiring generally.

Drawn by MR. GRAHAM.

LINCOLNSHIRE, ff. J. N. late of, &c. was attached to answer to S. H. of a plea, &c.: for that whereas, before the making of the promise hereafter mentioned, one J. H. son of the said S. had put himself apprentice to one T. H. one of the attornies of an apprentice assigned over by another master to whom he was bound, defendant promised to return her 20l. of the money in case her son did not stay with him three years. Plaintiff's son did not stay that time, and defendant refused to return the said 20l.

the

the court of our sovereign lord the now king of the bench here, to wit, at Westminster in the county of Middlesex, to be instructed in the mystery or business of such attorney, to serve in the manner of an apprentice from the feast of, &c. in A. D. 1717, to the full end and term of five years then next following, to wit, at, &c. in the county of L. aforesaid, in consideration that the said J. H. at the special instance and request of the said J. N. with the consent, assent, and agreement, as well of the said J. H. as of the said S. his mother, had assigned over the said J. S. to the said J. N. for the residue of the said term then to serve by the said J. H. to be served with the said J. N. and also in consideration of the sum of forty pounds then and there had and received by the said J. N. with the said J. H. on that occasion, he the said J. N. undertook, and promised the said S. to return to the said S. the mother of the said J. H. the sum of twenty pounds, provided that the said J. H. should not settle with the said J. N. for the term of three years, to be computed from the said feast of, &c. A. D. 1717 aforesaid: And the said S. in fact says, that the said J. H. did not settle with the said J. N. for the said term of three years, to be computed from the said feast of, &c. A. D. 1717 aforesaid, but within that term, to wit, on, &c. left the said J. N. to wit, at, &c.: Yet the said J. N. not regarding, &c. (Pledges, &c.)

Drawn by MR. WARREN.

Declaration a- LONDON, *ss.* George Neal, clerk, complains of the reve-
gainst defend- rend Peter Whalley, clerk, being, &c.: for that whereas the said
ant, for promi- rend Peter, at the time of the making of the promise and undertaking
ing plaintiff, if hereafter next mentioned, was, and from thence hitherto hath been,
he would enter and still is, rector of the church of (1) the united parishes of St.
into holy orders, M. P. and Saint G. Fenchurch (2) in the city of London: (3) *And*
he would make thereupon, on, &c. at, &c. it was agreed between the said Peter
him curate of and George, that the said George should procure himself to be duly
the church of admitted into the holy order of priesthood, according to the manner
which he was and form prescribed and used by the church of England, and should
rector. Plaintiff also procure himself to be duly licensed by the bishop of London to per-
entered himself, form the office of curate in the church of the united parishes aforesaid,
and was made and when so licensed as aforesaid should perform the said office
curate for a short accordingly; and in consideration thereof, the said Peter did then
time, but de- appoint the said George to perform the office of a curate in
endant after- his the said Peter's church of the said united parishes, and did pro-
wards turned mise to allow him the said George the yearly sum of fifty pounds for
him out, &c. &c. his maintenance in the same, and to continue him the said George
(1) "certain to officiate in the said church until he should be otherwise provided
other" of some ecclesiastical preferment, unless by fault by him commit-
(2) "aforesaid," ted, he said George should be lawfully removed from the same;
(3) "and the and the said agreement being so made, afterwards, to wit, on, &c.
said Peter being such rector, to
such rector as last aforesaid, whilest he was
last aforesaid, such rector, to
whilest he was wit, on, &c. at, &c. in consideration that the said George, at the special instance and request of the
such rector, to said Peter, had agreed to perform the office of a curate for the said Peter in his said last-mentioned
wit, on, &c. at, church, at and for the sum of fifty pounds of lawful, &c. he the said Peter undertook, &c. the
&c. in consideration said George to accordingly allow and pay him the said last-mentioned yearly sum of fifty pounds, and
that the said in,

in, &c. in consideration that the said George, at the special instance and request of the said Peter, had undertaken, and then and there faithfully promised the said Peter, to perform and fulfil every thing in the said agreement on his the said George's part to be performed and fulfilled, he the said Peter undertook, &c. the said George to perform and fulfil every thing therein contained, on the part and behalf of the said Peter to be performed and fulfilled: And the said George avers, that he the said George, in pursuance of the said agreement, afterwards, to wit, on, &c. did procure himself to be duly admitted into the holy order of priesthood, according to the manner and form prescribed and used by the church of England; and did afterwards, to wit, on, &c. also procure himself to be duly licensed by the bishop of London to perform the office of curate in the church of E. aforesaid, to wit, at, &c.; and the said George being so admitted and licensed as aforesaid, afterwards, to wit, on, &c. did enter upon and was received by the said Peter into the said office of a curate in the said Peter's church of the said united parishes, and did continue to perform the said office, and to officiate in the said church, until he was hindered and prevented by the said Peter as hereafter next mentioned: And the said George in fact says, that although he is not provided of any other ecclesiastical preferment, nor has been lawfully removed from the same church, or officiating therein (1), + and has been always ready and willing to perform the said office of curate as aforesaid in the said church, and to officiate therein: Yet the said Peter, not regarding his said promise and undertaking, so by him in manner and form aforesaid made, but contriving, &c. the said George in this behalf, hath not (2), *from the said George's entering upon his said office as aforesaid*, continued the said George curate of the said Peter, and permitted and suffered him to officiate as curate thereof, but during a great part of that time, to wit, upon and from the third day, &c. hitherto hath prevented and hindered the said George from officiating therein, to wit, at, &c. nor hath the said Peter, from the time of the (3) *said George's entering upon his said office as aforesaid*, paid to the said George the said sum of fifty pounds a-year, or any part thereof, although often requested so to do, but to pay the same to the said George for and during the time of (4) *his being so hindered from officiating in the said church as aforesaid*, he the said Peter hath hitherto wholly refused, and still refuses. And whereas, &c. &c. (2d Count same as the first, only omitting what is in Italic, and inserting what is in the margin to the end, when conclude the 2d Count as follows:) And the said George saith, that by reason of his being so hindered from officiating in the said last-mentioned church of the said Peter as aforesaid, he the said George hath, during all the time of obstruction, lost and been deprived of certain fees, and of certain other fees, profits, and emoluments belonging to his said office of curate, amounting in the whole to a large sum of money, to wit, the sum of twenty pounds, which he of right ought to and would other-

(1) "for or by reason of any fault by him committed,"

(2) "from the making of his said last mentioned promise and undertaking hitherto"

(3) "making the said last-mentioned promise and undertaking"

(4) "the said hindrance and obstruction in his said last-mentioned office of curate"

3d Count.

otherwise receive from the same, to wit, at, &c. &c. And whereas, &c. (3d Count same as the 2d Count, till you come to this mark +, when go on thus) : And although he the said George, confiding in the said last-mentioned promise and undertaking of the said Peter, did, from the making thereof, for a long space of time, to wit, until, &c. officiate, and then and always afterwards was ready and willing to continue and officiate for the said Peter in his said last-mentioned church, and would have so done had not the said Peter hindered and prevented him, to wit, at, &c. : Yet the said Peter, not regarding, &c. but contriving, &c. the said George in this behalf, hath not, from the time of the making of the said last-mentioned promise and undertaking, hitherto paid to the said George the said last-mentioned yearly sum of fifty pounds (although often requested so to do) ; but on the contrary, the said George in fact further saith, that after the making of the said last-mentioned promise and undertaking of the said Peter, to wit, on, &c. a large sum of money, to wit, the sum of seven pounds one shilling and eightpence of the said last-mentioned salary or yearly sum of fifty pounds, became and was due, owing, and payable from the said Peter to the said George, and still is in arrear and unpaid, contrary to the tenor and effect of the said last-mentioned promise and undertaking of the said Peter, and in breach and violation thereof, to wit, at, &c. &c. : And whereas, &c. &c. (for work and labour, &c. 5th Count, *quantum meruit* to ditto ; 6th Count, money had and received ; 7th Count, account stated ; and common conclusion.)

V. LAWES.

4th Count.

Declaration upon articles of agreement ; defendant undertook to serve plaintiff for a limited time, and not to enter into the service of another person. Breaches : 1st, that he quitted plaintiff's service ; 2d, that he worked for another person.

FOR that whereas, by certain articles of agreement made, concluded, and agreed upon the tenth day of, &c. at, &c. in, &c. between the said H. W. of the one part, and the said P. W. of the other part (one part of which said articles, sealed with the seal of the said P. W. and bearing date the day and year aforesaid, he the said H. W. now brings into court here), the said P. W. for the considerations therein and hereinafter mentioned, did covenant, promise, and agree to and with the said H. W. his executors, &c. that he the said P. W. should and would, for and during the space of seven years, continue and abide with the said H. W. &c. &c. (here recite the articles of agreement), as by the said articles of agreement; reference being thereto had, will appear : And the said H. W. in fact says, that although, upon making the said articles, to wit, on, &c. at, &c. the said P. W. entered and was received into the service of the said H. W. under and by virtue of the said articles, and so remained and continued from thence until his absenting himself therefrom as hereafter mentioned ; and although the said H. W. hath always, since the making of the said articles, hitherto done and performed, and been ready to do and perform, all things in the said articles contained on his part to be done, performed, and fulfilled, according to the tenor and effect, intent and mean-

meaning of the said articles; yet protesting that the said P. W. hath not performed and fulfilled any thing in the said articles contained on his part and behalf to be performed and fulfilled: In fact he the said H. W. saith, that the said P. W. did not, during the said term of seven years in the said articles mentioned, continue and abide with him the said H. W. and him faithfully serve at all lawful times, for working as journeyman of the trade of a gunmaker usually working in and about London, but omitted and neglected so to do, and therein failed and made default; and on the contrary, after he the said P. W. had so entered and was received into the service of the said H. W. under the said articles, and during the said term of seven years therein mentioned, and before the exhibiting of the bill of the said plaintiff against him the said defendant, to wit, on, &c. at, &c. in, &c. departed and absented himself from the service of the said plaintiff, and hath always from thence hitherto remained and continued, and still doth remain and continue, so absent and away from the service of the said plaintiff, contrary to the tenor and effect of the said articles, and in breach and violation thereof, whereby he the said plaintiff hath lost and been deprived of, during all that time, the service of the said defendant, under the said articles, and of all benefit and advantage thereof, and hath thereby been obliged to lay out and expend a large sum of money, to wit, the sum of fifty pounds of lawful money of Great Britain, in and about the hiring and employing others in his room and place to do and perform such business in the aforesaid trade and business of a gunmaker, as ought and otherwise would have been done by the said defendant, and for and by way of further breach of the said articles, by and on the part of the said defendant, he the said plaintiff, by virtue of the statute in such case made and provided, says, that after the said defendant was so entered and was received into the service of the said plaintiff under the said articles, during the said term of seven years therein mentioned, and before the exhibiting the bill of said plaintiff, the said defendant, to wit, on, &c. and for a long time afterwards, to wit, from thence hitherto, at, &c. in, &c. he the said defendant worked for another and different person than him the said plaintiff, to wit, for one A. B. in the trade of a gunmaker, without the said plaintiff giving him the said defendant leave in writing or otherwise so to do, contrary to the tenor and effect of the said articles, and in further breach thereof, whereby he the said plaintiff hath been deprived of the service of the said defendant, and the advantage arising therefrom, to wit, at, &c.; whereby, and by reason of which said several premises, and by force of the said articles, the said defendant became liable to pay to the said plaintiff the sum of one hundred pounds in the said articles mentioned, and thereby agreed to be paid on non-performance or breach of the said articles, whereby an action hath accrued, &c. (There was a 2d Count like the first, except, that after the recital of the agreement it went on to state

Breach on the statute.

state

state a memorandum indorsed upon the said agreement, by which the agreement was to be void in five years). V. LAWES.

Declaration on special agreement; defendant, hired in the coal and scavenger trade for a month certain, quitted before; whereby plaintiff lost the use of his carts and horses.

COURT of RECORD. Bowman Brown, by Andrew Anderson his attorney, complains of Samuel Barrington of a plea of trespass on the case: for that whereas, before and at the time of the making of the agreement hereafter mentioned, he the said Bowman, at the parish of St. Mary Matfelon, otherwise Whitechapel, in the county of Middlesex, and within the jurisdiction of this court, was, and from thence hitherto hath been, and still is, a wharfinger and carrier of coals for hire, and an undertaker for cleansing the public streets, lanes, alleys, and passages, and doing all other business as a raker or scavenger; and the said business hath, during that time, used, followed, and carried on, and still doth use, follow, and carry on, to wit, at the parish of St. Mary Matfelon, otherwise Whitechapel, in the county of Middlesex, and within the jurisdiction of this court, and during all that time hath there kept, as master thereof, divers cattle, cars, carts, and other carriages for the carrying on of his aforesaid businesses, to wit, at, &c. within the county and jurisdiction aforesaid; and the said plaintiff, so exercising, following, and carrying on such businesses as aforesaid, he the said plaintiff, on, &c. at, &c. in the court and jurisdiction aforesaid, at the special instance and request of the said defendant, hired and retained the said Samuel, as the servant of him the said Bowman, to drive such cars, carts, and other carriages of him the said Bowman, and the cattle of the said plaintiff drawing the same as the said plaintiff should please, for wages, that is to say, and to do and perform all such other business as should belong to such driver to do and perform during such service, at and after the weekly wages of seven shillings by the week, for all such time as he the said defendant should drive a coal-cart, and at and after the rate or weekly wages of twelve shillings for all the time as the said defendant should drive a scavenger's cart, to be therefore paid by the said plaintiff to the said defendant for his service aforesaid: and thereupon it was then and there agreed, by and between the said plaintiff and the said defendant, that the said service should commence and begin on, &c. and the said plaintiff should there continue the said defendant in his service, as such servant, for one month certain; and that the said defendant should there serve the said plaintiff, as such servant as aforesaid, for and during one month certain, commencing as aforesaid; and that the said plaintiff should there pay the said Samuel such respective wages during that time respectively as aforesaid; and the said agreement being so made, he the said plaintiff, &c. &c. (mutual promises): And the said plaintiff avers, that he, on, &c. at, &c. did receive the said defendant into his service as such driver, and the said defendant did then and there enter into the service of the said plain-

plaintiff as such driver; and the said Samuel did there continue in the service of the said plaintiff, as such servant and driver, from hence until and upon the eleventh day of, &c.; and although the said plaintiff did, during that time, there duly pay to the said Samuel all such wages as became due and payable to him for his said service, and was then and there ready and willing to employ the said defendant during the residue of the said one month certain, according to the agreement aforesaid, and to pay him the wages for his service aforesaid, according to the tenor of his agreement aforesaid, and to do and perform every thing in the said agreement contained, on his part and behalf to be done and performed, according to the tenor and effect thereof, to wit, at, &c.: Yet the said defendant, not regarding, &c. but contriving, &c. to deceive and defraud the said plaintiff in this behalf, after the making of the agreement aforesaid, and before the expiration of the said one month, to wit, on, &c. at, &c. without the leave and licence, and against the will of the said plaintiff, wholly deserted and quitted the service of the said plaintiff, and from that time to the end of the said month there wholly refused to serve the said plaintiff as such servant as aforesaid (although to perform, &c. the said defendant was requested by the said plaintiff afterwards, to wit, on, &c. and often afterwards, to wit, at, &c.); but he the said Samuel to perform his said promise and undertaking, so by him made in this behalf as aforesaid, there wholly refused; whereby the said plaintiff, for the want of the service of the said defendant in his said business, was greatly damaged and injured, and lost the use and service of his said cattle and carriages, and the benefit and advantage of carrying out of great quantities of coals for hire in his said business, to wit, at, &c.

Drawn by MR. WARREN.

LONDON. M. H. complains of J. D. being, &c.: for that whereas heretofore, to wit, &c. in consideration that the said M. (he the said M. being then and there a merchant), at the special instance and request of the said J. would buy of the said J. certain parcels of shoes of him the said J. in the way of his trade and business of a shoemaker, together with the brokage thereof, at and for a large sum of money, to wit, the sum of two hundred and thirteen pounds of lawful money of Great Britain, to be sent from the port of London to the Island of Jamaica in the West Indies, by way of venture, to be there sold and disposed of by the said M. be the said J. undertook, and then and there faithfully promised said M. to guarantee him said M. ten pounds per cent. profit on said adventure, clear of all reasonable charges: And said M. in fact saith, that he, confiding in said promise and undertaking of said J. did, after the making thereof, to wit, on, &c. purchase of and from said J. in the way of his said trade and business of a shoemaker, the aforesaid shoes, together with their package, at and for

Declaration, in consideration of the plaintiff would carry a venture, consisting of shoes, to Jamaica, the defendant guaranteed a profit of 10l. per cent.; a loss arose, and defendant refuses to pay, &c.

the said sum of two hundred and thirteen pounds of lawful money of Great Britain; and afterwards, to wit, on, &c. paid him the same; and afterwards, and with all convenient speed after the said sale thereof, sent, and caused the said shoes to be sent, from the said port of L. to, &c. and there sold and disposed of the same as and under such venture as aforesaid, in the best manner he was able, and for the most money that could be there obtained for the same, to wit, &c. : Yet the said M. in fact further saith, that there did not, upon such sale of the said venture, arise or accrue unto him the said M. ten per cent. profit on the said adventure, clear of all reasonable charges; on the contrary the said M. saith, that upon the said sale of the said adventure, and after deducting and allowing all reasonable charges sustained on that occasion, there happened and arose a loss to a certain large amount, to wit, &c. of lawful money of Great Britain, to wit, at, &c. ; whereby, and by reason whereof, and of his aforesaid promise and guarantee, he the said J. became liable to pay, and ought to have paid, to said M. not only the said amount of the said loss so sustained upon the said adventure as aforesaid, but also at the rate of ten per cent. profit thereon; whereof said J. afterwards, and after such loss upon the said adventure as aforesaid, and before the exhibiting the bill of said M. to wit, on, &c. had notice. And whereas heretofore, to wit, on, &c. in consideration that said M. at the like special instance and request of said J. had then and there bought of said J. a certain other parcel of shoes of him said J. together with the package thereof, at and for a certain large sum of money, to wit, &c. then and there paid to the said J. to be sent to the said J. of J. in the West Indies, by the way of venture, to be there sold and disposed of by said M. he the said J. undertook, &c. said M. to guarantee him said ten per cent. profit on said last-mentioned adventure, clear of all reasonable charges: And said M. in fact further saith, that he said M. afterwards, and with all convenient speed after the said last-mentioned sale, sent, or caused the said last-mentioned shoes to be sent, to the said island of J. and there sold and disposed of the same, as and under such venture as aforesaid, in the best manner he was able, and for the most money that could be there obtained for the same, to wit, at, &c. : And the said M. in fact further saith, that there did not, upon such sale of the said last-mentioned shoes, arise or accrue unto him said M. ten per cent. profit on the said last-mentioned adventure, clear of all reasonable charges; but on the contrary, &c. (as in the last Count; *indebitatus assumpsit* and *quantum meruit* for work and labour; money laid out, had, and received; an account stated, with a common conclusion. Damages twenty pounds.)

V. LAWES.

2d Count.

MIDDLESEX,

MIDDLESEX, ff. John Bexwell, one, &c. &c. and James Christie: that defendant, long before, and at the time of the committing of the grievance hereafter next mentioned, was; and from thence hitherto hath been, and still is, an auctioneer, and the trade and business of an auctioneer, for and during all the time aforesaid, hath used, exercised, followed, and carried on, and still doth use, exercise, follow, and carry on, in exposing to sale and selling by auction cattle, furniture, and other things, for all persons willing to employ him to sell the same, for certain reward paid by such persons to defendant for his skill and care in the disposal thereof, to wit, at W. in the county of M.: And whereas plaintiff, before the committing of the grievance hereafter next mentioned, was lawfully possessed of a certain gelding of a large price; to wit, of the price of fifteen pounds of lawful, &c. as of his own proper gelding, and which said gelding plaintiff, before the committing of the grievance hereafter next mentioned, was willing and desirous should be sold and disposed of by public auction, to wit, at, &c. aforesaid: and said defendant, so being such auctioneer as aforesaid; and plaintiff being so possessed of said gelding, and being willing and desirous to sell and dispose of same as aforesaid; said plaintiff heretofore, to wit; on ninth September 1775, at Westminster aforesaid, delivered; and caused to be delivered, to said defendant, said gelding of plaintiff, to be by him said defendant *exposed to sale, and sold by public auction on said ninth September 1775, for the sum of fifteen pounds, but not otherwise*, for a reasonable price or reward to be therefore paid by plaintiff to defendant, in consideration thereof, he said defendant then and there, to wit; on said ninth day of September 1775 aforesaid, at, &c. aforesaid, undertook to expose said gelding to sale, and to sell same accordingly: And said plaintiff saith, that although said defendant did afterwards, to wit, on said ninth September 1775 aforesaid, at Westminster aforesaid, expose said gelding to sale; and sell same by public auction: Yet said plaintiff further saith, that defendant, not regarding his duty in his said trade, business, and employ of an auctioneer as aforesaid, on the day and year aforesaid, at, &c. aforesaid, so negligently behaved and conducted himself at said auction in AND ABOUT the "sale" *selling and disposing* of said gelding, and took so little and such bad care about the SELLING AND DISPOSING OF SAID GELDING, that by and through the mere carelessness, neglect, and default of said defendant in the premises, said gelding "being of the price of fifteen pounds as aforesaid," was then and there, to wit, &c. sold and disposed of by said defendant for "a much less sum of money than the same was reasonably worth, and ought to have been sold for by defendant" *a much less sum of money than the sum of fifteen pounds*, to wit, for the sum of six pounds sixteen shillings and sixpence, and no more, to wit, at twenty pounds aforesaid. (Two Counts agreeable to what is between inverted commas.)

Declaration in *assumpsit* against an auctioneer, for selling plaintiff's horse at a public auction for a less sum of money than plaintiff had ordered.

These words to be omitted in the 2d and 3d Counts; and in the 2d Count, instead of them, to be inserted the following: *for any sum of money not under the sum of fifteen pounds.*

To be inserted in 3d Count.

Omitted in the 3d Count.

Vide this case reported in Cowp. 395. the highest bidder; otherwise, if plaintiff's orders had been to set up the lot at five, the auctioneer being bound to sell to a particular price.

C. RUNNINGTON.

Declaration on agreement to work grindstones at plaintiff's quarries for a year certain; defendants deserted their work before the expiration of the year, whereby plaintiff had several grindstones left on his hands, and lost the freight thereof in a ship he had retained to transport them.

NORTHUMBERLAND, *ff.* Arthur Edmeston, a debtor, &c. against John Taylor, George Dawson, and George Thompson: for that whereas the said Arthur, at the time of making of the agreement hereafter mentioned, was, and from thence continually afterwards hitherto hath been, and still is, lawfully possessed of and in certain stone quarries called Spittleburn Quarries, situate, lying, and being at Spittleburn in the said county; in which said quarries the said Arthur, before the said time of making of the said agreement, and at the said time of making of the said agreement, and from thence hitherto, was used and accustomed to dig and work grindstones: And whereas, on the fifteenth day of August, in A. D. 1746, at Spittleburn aforesaid, it was agreed, by and between the said Arthur and the said John Taylor, George Dawson, and George Thompson, that the said John Taylor, George Dawson, and George Thompson, should go to the said quarries, and there work grindstones for his the said Arthur's account, the said grindstones to be worked after the manner of Gateshead Fell, at the rate of six shillings and sixpence by the chalders, and three shillings and sixpence to each of them the said John Taylor, George Dawson, and George Thompson, by way of earnest, to be therefore paid to them by the said Arthur; and that the said John Taylor, George Dawson, and George Thompson, should enter on the said work on the eleventh day of November, commonly called Martinmas, then next, and to continue for one whole year; and that the said Arthur should pay to them the said John Taylor, George Dawson, and George Thompson, on account of their said wages, six shillings a-piece per week subsistence money, which were to be paid them monthly, and to reckon and clear with them at Mayday, Lammas, and Martinmas: and their said agreement being so made, &c. (mutual promises); and although the said John Taylor, George Dawson, and George Thompson, in pursuance of the said agreement, did afterwards, to wit, on the said eleventh day of November in the year of Our Lord 1746 aforesaid, go to the said quarries, and enter and begin to work grindstones there for the said Arthur's account, and there continued so to do for some part of the said year, to wit, from thence until and upon the first day of August in A. D. 1747; and although the said Arthur, during all that time, well and truly performed and fulfilled all things in the said agreement contained, on his part and behalf to be performed and fulfilled, according to the form and effect of the said agreement, to wit, at Spittleburn aforesaid, and was there ready to perform and fulfil all things contained in the said agreement, on his part and behalf to be performed and fulfilled, during the residue of the said year, according to the true intent and meaning of the said agreement: Yet the said John Taylor, George Dawson, and George Thompson, not regarding their aforesaid promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Arthur in this behalf, they the said John Taylor, George Dawson,

Dawson, and George Thompson, afterwards, during the said year, to wit, on the said first day of August in A. D. 1747 aforesaid, at Spittleburn aforesaid, without the licence, and against the will, of the said Arthur, deserted their said work, nor did *not*, during all or any part of the residue of the said year, work at their said work for the said Arthur (although to do this the said John Taylor, George Dawson, and George Thompson, afterwards, to wit, on the said first day of August in the year last aforesaid, and often afterwards, during the said year, at Spittleburn aforesaid, were requested by the said Arthur to perform their said agreement in this behalf); but they to do this wholly refused; whereby not only the said Arthur there lost the benefit of getting and working grindstones at his said quarry for and during all the rest and residue of the said year, but also a great number, to wit, one hundred chalders of stones, which had been begun to be worked by the said John Taylor, George Dawson, and George Thompson there into grindstones, were by them left unfinished, and became broken, fractured, spoiled, and of no use or value whatsoever, and which were to have been finished by them during the said residue of the said year; and a certain ship which the said Arthur had hired on freight to carry and transport, amongst others things, those grindstones, when finished, to the port of London, remained a long time unladen, and was forced at last to go away and depart on her voyage without those grindstones, and without a great part of her freight, to wit, at Spittleburn aforesaid. And whereas, &c. (a Count for one hundred pounds had and received, and a common conclusion to the last Count.)

Special damage.

Drawn by MR. WARREN.

LONDON, ff. Robert B. and William W. executors of Declaration in the last will and testament of Enoch S. deceased, complain of *assumpsit*, by the William L. being, &c.: for that whereas, in the lifetime of the executors of a master of a ship, said Enoch, and before the making of the promise and undertaking of the said William L. hereinafter next mentioned, to wit, on the twenty-ninth of March A. D. 1768, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, the said Enoch, then and there commander of a certain ship or vessel called the Hope, then lying in the river Thames, had entered into a charter-party with certain persons trading under the stile and firm of Messrs William P. and Co. as the freighters of the said ship or vessel, whereby it was agreed on the part of the said Enoch to let his said ship to the said Messrs. William P. and Co. to perform the voyages mentioned in the said charter-party (that is to say), to take on board his vessel at L. a cargo of merchandize, or as great a part of one as might be shipped in four weeks from the freighters of his ship, who had become insolvent and unable to perform their contract, on which account plaintiff was obliged to exhibit his petition against the correspondents of the freighters, who resided abroad; upon which a sentence was made that the cargo should be consigned to one W. L. subject to the stipulations of the charter-party, and that certain gains to be made by the ship in her voyage out and home. 2d Count, for demorage; money laid out and expended; account stated.

L 1 3

date

Terms of the date of the said charter-party; and that he the said Enoch having received the said cargo of merchandize on board, should set sail therewith (wind and weather permitting), and proceed to Madeira; and being arrived there make a right and true delivery of his said cargo to the correspondents of the said freighters; and having completed such delivery, should receive on board his vessel, at the aforesaid port of Madeira, a cargo of merchandize, or as great a part of one as might be put on board by the freighters' correspondents fourteen days from the day of her arrival at the aforesaid port; and having received the said cargo of merchandize on board, should set sail therewith and proceed to Grenada; and being arrived there should make a right and true delivery of such part of the said cargo of merchandize as might be ordered by the said freighters to their correspondents there; and having fully completed such delivery, and being ready to take in, should receive on board, at the aforesaid port of Grenada, a cargo of merchandize, or as great a part of one as the correspondents of the aforesaid freighters might think proper to ship in the space of thirty days, to be reckoned from the day of her arrival at the aforesaid port of Grenada; and having received the said cargo of merchandize on board, should set sail therewith to one of the following ports (that is to say), Charlestown, Baltimore, Alexandria, or Boston; and being arrived at one of the before mentioned ports as should be ordered by the aforesaid freighters, should make a right and true delivery of the said cargo of merchandize; and having completed such delivery, and being ready to take in, should receive on board at the said port a cargo of merchandize, or as great a part of one as should be shipped on board the said ship in the times in such charter-party expressed for the said ports respectively, which cargo the freighters should have liberty to order either for London, L'Orient, or Havre; and by the said charter-party fourteen days were allowed to discharge; and if the cargo should be discharged at either of the two last ports, the ship was then to commence hire at ninety pounds British sterling per month, two-thirds port charges, and five per cent. primage; and for the performance of the said intended voyage the aforesaid Enoch agreed to accept seven hundred pounds British sterling, two third parts of all port charges and pilotage, together with five per cent. primage on the said seven hundred pounds; and the said persons trading under the stile and firm of Messrs. William P. and Co. on their part agreed with the said Enoch by the said charter-party, that they the said freighters, their executors, administrators, factors, agents, or assigns, some or one of them, would well and truly pay, or cause to be paid, unto the said Enoch, his executors, administrators, or assigns, seven hundred pounds British sterling, as above expressed, for the freight and hire of his said ship called the Hope, to be paid in the manner following (that is to say), one bill for one hundred pounds at three months, and one bill for one hundred pounds at four months, and the remainder on his arrival with his ship Hope at the port of discharge; and that in case of

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demorage or detention necessary for the benefit of the aforesaid cargoes at either of the aforesaid ports, more than above expressed, they the aforesaid freighters would pay to the said Enoch, his executors, administrators, or assigns, the sum of three pounds ten shillings per day, when the freight should be settled, reference being thereunto had, will, amongst other things, more fully appear. And whereas afterwards, on the third of April in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, the said Enoch had received on board of the said ship or vessel, then lying in the river Thames, a cargo of merchandize for delivery at Madeira to Messrs. S. T. and Co. as the correspondents of the said freighters there, but had instructions from the said freighters not to deliver the said cargo to the house of the said Messrs. S. T. and Co. unless the said Messrs. S. T. and Co. could execute a certain order from the said Messrs. William P. and Co. for divers, to wit, one hundred and fifty pipes of Madeira wines, and should agree to deliver such wines to the said Enoch; and the said Enoch had also instructions from the said freighters, in case he should be able to procure a freight directly from Grenada aforesaid to London aforesaid, to accept the same and return therewith without going to America: And whereas the said Enoch, having received the said cargo on board his said ship, had afterwards, to wit, on the day and year last aforesaid, set sail therewith from the river Thames, and afterwards, to wit, on the twenty-eighth day of May, in the year aforesaid, arrived with his said ship and the said cargo on board thereof, at Madeira aforesaid, and the said Messrs. S. T. and Co. having then and there had notice from the said Enoch of the consignment of the said cargo of merchandize to them, and of the said order for wines to be exchanged by them in manner aforesaid, had thereupon agreed and undertaken to execute the said order and deliver the wine so ordered to the said Enoch; and the said Enoch, confiding in such agreement and undertaking of the said Messrs. S. T. and Co. had delivered the said cargo of merchandize to them: And whereas the said Messrs. S. T. and Co. although they, in part performance of their said agreement and undertaking, delivered to the said Enoch on board his said ship divers, to wit, sixty pipes of wine, had wholly refused to execute the said order as to the residue of the said wine, or to deliver such residue to the said Enoch, alledging as a reason for such refusal that the said Messrs. William P. and Co. had become insolvent: And thereupon the said Enoch, for the obtaining of justice in that behalf, afterwards, to wit, on the sixteenth of June in the year aforesaid, in the chief court of judicature holden before the Doctor Anthony Roderiques Villosa de Oliviera, chief justice in the district of the island of Madeira, having then and there competent authority in that behalf, exhibited to the said chief justice a certain petition and complaint against the said Messrs. S. T. and Co.; upon which said petition and complaint such proceedings were afterwards had in the same court, by and between the said

End of the character-party.

Petition to chief justice of Madeira.

Decree and sentence set out.

Enoch and the said Messrs. S. T. and Co. that by the decree of the said chief justice a certain public instrument was drawn up and signed, as well by the said chief justice as by the said Messrs. S. T. and Co. and the said Enoch, containing, amongst other things, certain clauses and conditions to the effect following (that is to say), that the said Messrs. S. T. and Co. should load, as they had already loaden, on board the said ship Hope, sixty pipes of wine; that the said wine should be charged as a security, not only for the amount of the goods which the said Messrs. S. T. and Co. had received, after deducting what should be judged proper, but should also be a security for the freight agreed for in the said charter-party of affreightment, after the charging on the said freight all the gains that the said ship might make for the places of her destination as expressed in the said charter-party, as well as those made from London to the port of the city of Funchall in the island of Madeira; that the said wine should be consigned to William L. of the court and city of London for account and risque of the said S. T. and Co. after proceeding to the ports mentioned in the said charter-party of affreightment; that the said wines being delivered to the said correspondent William L. the same shall there remain in his hands as a deposit, without being liable to be withdrawn in any manner until the disputes respecting the shipping of the said wines should be judged in the court and city of London, where the same originated between the contractors the said William P. and Co. Samuel G. and Henry C. and Co. in the said public instrument and proceedings named; and that the said Enoch on his part should sign the bills of lading for the said wines as shipped for account or risque of the said S. T. and Co.; and it was also determined by the said chief justice that the said Enoch should sign the bills of lading for the said sixty pipes of wine with the clauses of the said public instrument. And whereas the said Enoch afterwards, to wit, on the twenty-eighth of June in the year aforesaid, in pursuance of such sentence, and agreeably to the public instrument so drawn and signed as aforesaid, had signed bills of lading for the wine so shipped as aforesaid for account and risque of the said S. T. and Co. to be delivered at London to the said William L. or his assigns, he or they paying freight for the same at the rates in such bills of lading respectively mentioned, with primage and average accustomed, but with a memorandum subscribed to each of the said bills of lading, that the same were to be subject to the clauses and conditions specified in the said public instrument: And whereas the said Enoch had afterwards, to wit, on the day and year last aforesaid, set sail from Madeira aforesaid, with his said ship and the said sixty pipes of wine on board thereof, and proceeded to Grenada aforesaid, and afterwards, to wit, on the thirty-first of July in the year aforesaid, arrived there with at Grenada aforesaid, and there remained with the said ship for the space of thirty days and upwards from the day of such arrival, during all that time was ready there to have taken in and received

received on board a cargo of merchandize, or as great a part of one as the correspondents of the aforesaid freighters might think proper to ship; but the said freighters did not by themselves, or by any correspondents, at the aforesaid port of Grenada, ship or cause to be shipped a cargo of merchandize, or any part of one, on board the said ship of the said Enoch, nor had they or either of them ordered the said Enoch to set sail and proceed from the said port of Grenada to any or either of the said four ports mentioned in the said charter-party of affreightment; and thereupon the said Enoch had procured divers goods and merchandizes to be laid on board the said ship at Grenada aforesaid upon freight for London, where the said wines were to be delivered to the said William L. by virtue of the aforesaid sentence and bills of lading, the procurement of which said goods and merchandizes upon freight from Grenada to London was then and there the most advantageous measure for all the parties interested in the said wines or chargeable with the freight of the said ship by virtue of the said charter-party or public instrument, that the said Enoch could, under the circumstances aforesaid, adopt: And whereas the said Enoch afterwards, to wit, on the seventh of September in the year aforesaid, had set sail with his said ship, and the said sixty pipes of wine, and said other goods on board thereof, from the aforesaid port of Grenada, and proceeded from thence to London aforesaid, and afterwards, to wit, on the ninth of December in the year aforesaid, arrived therewith at L. aforesaid: And whereas the said Enoch afterwards, to wit, on the twelfth of December in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, departed this life, having duly made his last will and testament, and appointed the said Robert and William W. executors thereof; of all which premises the said William L. afterwards, and before the making of his said promise and undertaking, to wit, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice: and thereupon afterwards, to wit, on the thirty-first of January in the year of Our Lord 1789, at L. aforesaid, in the parish and ward aforesaid, in consideration of the premises, and also in consideration that the said Robert and William W. executors as aforesaid, at the special instance and request of the said William L. would then and there deliver to him the said sixty pipes of wine consigned to him in manner aforesaid, he the said William L. undertook, and then and there faithfully promised the said Robert and William W. as such executors, to pay them so much money as the gains which the said ship had made in her voyages expressed in the said charter-party should be deficient of the money by the said charter-party stipulated to be paid to the said Enoch or his executors, when he the said W. L. should be thereunto afterwards requested: And the said Robert and William W. executors as aforesaid, aver, that they, confiding in the said promise and undertaking of the said William L. did then and there, to wit, on the day and year last aforesaid, at L. &c. aforesaid,

said, deliver to the said William L. the said sixty pipes of wine so consigned to him as aforesaid, and that the gains which the said ship or vessel made in her voyages expressed in the said charter-party were deficient of the money by the said charter-party stipulated to be paid to the said Enoch or his executors, by a large sum, to wit, the sum of four hundred and ninety pounds of lawful money of Great Britain; whereof the said William L. afterwards, on the

day of April in the year last aforesaid, in the parish and ward aforesaid, had notice from the said Robert and William W. executors as aforesaid (2d Count, for demorage; other money Counts): Yet the said W. L. not regarding the said several promises and undertakings so by him made as aforesaid, hath not paid to the said Robert and William W. executors as aforesaid, the said sum of four hundred and ninety pounds in the first Count of this declaration mentioned, nor the several sums of money in the said other promises and undertakings mentioned, although often afterwards thereunto requested; but to pay the same, or any part thereof, to the said Robert and William W. executors as aforesaid, or to either of them, the said W. L. hath hitherto altogether refused and still refuses, and the same still remains wholly unpaid and unsatisfied: whereupon the said Robert and William W. executors as aforesaid, say, that they are injured, and have sustained damage to the value of one thousand pounds; and therefore they bring suit, &c.; and they bring here into court the letters testamentary of the said E. by which it appears to the court here that they they are the executors of the last will and testament of the said E. and have administration thereof.

S. MARRYATT.

Declaration in
assumpsit against
defendant an
agent to insure,
and who had
insured plain-
tiff's interest in
a ship upon less
beneficial terms
than he ought
and might have
done, by insur-
ing 1000l.; and
although defen-
dant knew that
the fleet from Ja-
maica was to sail
with convey, he
only insured 100l.

LONDON, *ff.* George Johnstone against Joseph Barton; for that whereas heretofore, to wit, on the first of February A. D. 1781; at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, in consideration that the said George, at the special instance and request of the said Joseph, had retained and employed the said Joseph as his agent to effect a certain insurance against the dangers of the seas, for and on account of him the said George, on a certain ship or vessel called the *Industry*, of a large value, to wit, of the value of one thousand pounds, at and from Jamaica, in parts beyond the seas, to the port of London, for a certain reasonable commission or reward to be therefore paid by the said George to the said Joseph, he the said Joseph then and there (that is to say), on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said George, to effect such insurance as aforesaid, at 15l. 15s. premium, and the remainder at 26l. 5s. 10l. of which to be returned if the ship sailed with convey, and arrived. 2d Count, for not insuring at Mull Bay in Ireland for what had been uninsured, unless to the amount of 1500l. which was not sufficient to cover the amount of plaintiff's interest, which was 2700l. whereby plaintiff lost his indemnity as to the remainder. 3d Count, stating loss of indemnity for the remaining 2600l. and the 100l. first insured deducted. Money had and received; money laid out and expended; and account stated.

said,

id, for and on the account of him the said George, upon the most beneficial and advantageous terms he should be able : And the said G. in fact says, that although the said J. after the making of his said promise and undertaking, to wit, on the seventeenth of February in the year aforesaid, at L. aforesaid, in the parish and ward aforesaid, did effect a certain insurance for and on the account of him the said George upon the said ship or vessel for the voyage aforesaid, to the amount of one thousand pounds ; and although he said J. then and there well knew that the said ship or vessel would sail for Jamaica aforesaid with convoy for the said voyage, and effected an insurance upon the said ship or vessel for the sum of one hundred pounds, part of the said sum of one thousand pounds, at a premium of fifteen pounds fifteen shillings per cent. upon a warranty that the said ship or vessel should sail with convoy for the said voyages, and could and might have then and there effected an insurance thereon for the residue of the said sum of one thousand pounds upon the like terms, and according to the tenor and effect of his said promise and undertaking ought so to have done : Yet the said Joseph, not regarding his said promise and undertaking, but contriving and fraudulently intending, craftily and subtilly to deceive and defraud the said G. in this behalf, did not, nor would, effect an insurance for and on account of the said G. for the residue of the said sum of one thousand pounds, upon the like terms, or otherwise upon the most beneficial and advantageous terms that he was able ; but refused and neglected so to do ; and on the contrary thereof, the said J. then and there effected an insurance for the sum of nine hundred pounds, the residue of the said sum of one thousand pounds, upon less beneficial and advantageous terms, that is to say, at a premium of twenty-six pounds five shillings per cent. to return ten pounds per cent. in case the said ship or vessel should sail with convoy for Great Britain, and arrive : And the said George in fact further saith, that at the time of the effecting of the said insurance the said ship or vessel was in safety, to wit, at Jamaica aforesaid ; and that he the said George then, and continually from thence until and at the time of the loss thereof as hereinafter mentioned, was interested in the said ship or vessel to the said amount of one thousand pounds, to wit, at L. aforesaid, in the parish and ward aforesaid ; and that the said ship or vessel afterwards, to wit, on the twentieth of December in the year aforesaid, departed and set sail from Jamaica aforesaid toward and for the said port of L. with convoy for the said voyage, but never arrived at Great Britain aforesaid ; for that the said ship or vessel afterwards, to wit, on the twenty-seventh of February A. D. 1782, in the course of her said voyage from Jamaica to the said port of L. to wit, at Mull Bay upon the coast of Ireland, was, by and through the mere danger of the seas, and by the force of stormy and tempestuous weather, stranded, wrecked, and wholly lost to the said George ; by reason of which said several premises, the said George hath been and is wholly precluded from
the

of Count,

the benefit of a return of premium upon the said insurance effected by the said Joseph for the said sum of nine hundred pounds in manner aforesaid, and hath thereby incurred and been necessarily put to an additional expence to a large amount, to wit, to the amount of ninety-four pounds ten shillings, in and about such insurance of the said ship or vessel, to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas, at the time of the making the promise and undertaking of the said Joseph hereinafter next mentioned, the said ship or vessel, called the Industry, was lying and being in safety at Mull Bay aforesaid, in the course of her said voyage from Jamaica to the port of L. laden with a certain cargo of goods and merchandizes upon freight, and was about to proceed with her said cargo from Mull-bay aforesaid to the port of L.; whereof the said Joseph heretofore, to wit, on the twenty-third of February in the year 1782 aforesaid, at L. aforesaid, in the parish and ward aforesaid, had notice: and thereupon, in consideration of the premises last aforesaid, and also in consideration that the said George, at the special instance and request of the said Joseph, had retained and employed the said Joseph as his agent to effect a certain insurance against the dangers of the seas, for and on the account of him the said George upon the said ship or vessel and the freight thereof at and from Mull Bay aforesaid to the said port of L. to a large amount, to wit, to the amount of two thousand seven hundred pounds of lawful money of Great Britain, in case the said ship and freight had not been before then insured by the said Joseph on the account of the said George for her aforesaid voyage from Jamaica to London to that amount, for a certain reasonable commission or reward to be therefore paid by the said George to the said Joseph, he the said J. then and there, that is to say, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said George, to effect such insurance, for and on the account of him the said George to the said amount of two thousand seven hundred pounds, or so much thereof as was then remaining uninsured: And the said George in fact says, that although the said ship and freight had not been insured by the said Joseph on the account of the said George for her aforesaid voyage to the said amount of two thousand seven hundred pounds, but to a much less amount, to wit, to the amount of one thousand five hundred pounds only; and although the said Joseph, after the making of his said last-mentioned promise and undertaking, before he had any notice of the loss of the said ship or vessel as hereinafter mentioned, could and might have effected an insurance for and on the account of the said George on the said ship or freight for the residue of the said sum of two thousand seven hundred pounds; and although the said George, at the time of making the said last-mentioned promise and undertaking of the said Joseph, and from thence until and at the time of the loss hereinafter mentioned, was interested in the said ship or vessel, and the freight thereof, to a much larger amount than

that the said sum of one thousand five hundred pounds, that is to say, the said amount of two thousand seven hundred pounds, to wit, at L. aforesaid, in the parish and ward aforesaid: Yet the said Joseph, not regarding his said last-mentioned promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said George in this behalf, did not nor would effect an insurance upon the said ship and freight or the residue of the said sum of two thousand seven hundred pounds, or any part thereof, for and on the account of him the said George, but therein wholly failed and made default: And the said George in fact farther saith, that after the making the said last-mentioned promise and undertaking of the said Joseph, and before the arrival of the said ship or vessel at the said port of L. to wit, on the said twenty-seventh of February in the year last aforesaid, at Mull Bay aforesaid, the said ship or vessel, by and through the mere dangers of the seas, and by the force of stormy and tempestuous weather, was stranded and wrecked, and a great part of the said cargo so laden on board her as aforesaid was thereby then and there lost; whereby the said George sustained a loss upon the said ship or vessel, and the freight thereof, to a large amount, to wit, the amount of two thousand six hundred pounds; and by reason of such default of the said Joseph as last aforesaid, the said George hath been and is wholly deprived of all indemnity in respect of his said loss to any greater amount than the sum of one thousand five hundred pounds, which is insufficient to cover the same, to wit, at L. aforesaid, in the parish and ward aforesaid. And whereas ^{3d Count} heretofore, to wit, on the said twenty-third of February in the year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, in consideration that the said George, at the special instance and request of the said Joseph, had retained and employed the said Joseph as his agent to effect a certain other insurance against the dangers of the seas, for and on the account of him the said George, upon a certain other ship or vessel called the Industry, and the freight thereof, at and from Mull Bay aforesaid to the said port of L. to a large amount, to wit, to the amount of two thousand seven hundred pounds of lawful money of Great Britain, for a certain reasonable commission or reward to be therefore paid by the said G. to the said J. he the said J. then and there, that is to say, on the day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said George, to effect such insurance as last aforesaid, for and on the account of him the said George: And the said G. in fact says, that the said last-mentioned ship or vessel, at the time of the making of the said last-mentioned promise and undertaking of the said Joseph was in safety, to wit, at Mull Bay aforesaid; and although the said Joseph, after the making of his said last-mentioned promise and undertaking, and before he had any notice of the loss of the said last-mentioned ship or vessel as hereinafter mentioned, could and might have effected such insurance as last aforesaid, for and on the

Declaration on a special agreement made between plaintiffs, who were owners of certain oyster-grounds in the Isle of Sheppey, and defendant, that defendant should dredge and pick the oysters in their oyster-ground during the season for certain wages, and that he should not depart from his work without leave, against defendant, for departing before the end of the season without leave.

KENT, to wit. Hayward Chambers, Henry Chambers, and Robert Alexander, complain against J. W. being, &c. : for that whereas the said plaintiffs, at the several times hereinafter mentioned, were possessed of certain oyster-grounds and oysters, lying upon the shores of the manor of M. in the Isle of Sheppey, in the county aforesaid ; and that the said plaintiffs being so possessed thereof, afterwards, to wit, on first August 1772, at M. in the county aforesaid, it was agreed by and between the said plaintiffs and defendant in manner following, that is to say, that he the said defendant should and would, in a proper, skilful, and workmanlike manner, dredge, pick, and catch oysters for the said plaintiffs in and upon their oyster-grounds and oyster-layings upon the shores of the manor of M. in the Isle of S. in the said county of K. for and during all that season for catching and picking of oysters, and until the then present stock of oysters of the said plaintiffs there should be all dredged up and caught ; and that he the said defendant should and would, at all times during the said oyster-catching season, demean and behave himself orderly and obediently to the said plaintiffs, each and every of them, and to each and every of their orders and commands in the said oyster-dredging and work, and to come to and not depart from it without the licence and consent in writing of said plaintiffs, or some or one of them, paying to the said defendant twelve shillings per week weekly for such his labour and work, and so in proportion for less time than a week ; *and in case the said defendant should leave the said work before the oyster-catching season was over without such licence and consent as aforesaid,* or should not behave orderly and obediently to the said plaintiffs, each and every of them, and to each and every of their orders and commands in the said oyster-dredging and work, that then the said defendant so leaving, and not behaving orderly and obediently, as aforesaid, *did, by the said agreement, promise to forfeit and pay upon demand to the said plaintiffs, or some or one of them, the sum of five pounds, to and for their own use ;* and the said agreement being so made as aforesaid, he the said defendant afterwards, to wit, on the same day and year aforesaid, at Maidstone aforesaid, in the said county, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there undertaken, and faithfully promised the said defendant, every thing in the said agreement contained on their part and behalf to be performed and fulfilled, undertook, and to the said plaintiffs then and there faithfully promised, to perform every thing in the said agreement mentioned, on his part and behalf to be performed and fulfilled : And the said plaintiffs in fact say, that the season for catching and picking of oysters continued from the sixth August next, after the making the said agreement, until the thirty-first day of November in the year aforesaid ; and that the said stock of oysters which they the said plaintiffs had on their said oyster-grounds and oyster-layings are not yet dredged up and caught : And the said plaintiffs in fact further say, that although the said defendant afterwards, to wit, on sixth August 1772, did enter into and upon the said oyster-grounds and

and oyster-layings upon the shores of the said manor of M. aforesaid in the said county, and did dredge, catch, and pick oysters there for a short space of time, to wit, for the space of three weeks then next following; and although they the said plaintiffs did pay him the said defendant at and after the rate of pounds during the time that the said defendant dredged, caught, and picked oysters as aforesaid, and were ready and willing to pay, and continue to pay him, at and after the said rate, during the remainder of the season for catching of oysters: Nevertheless the said defendant, well knowing the premises, and not regarding his said promise and agreement so by him made as aforesaid, but contriving, &c. afterwards, and before the then present stock of oysters of the said plaintiffs in and upon the said oyster-grounds, &c. were all dredged up and caught, and also before the said season for dredging, catching, and picking of oysters, was ended, to wit, on the twenty-seventh August in the year aforesaid, and without the licence and consent of said plaintiffs, or either of them, left and departed from the said work, to wit, at, &c. contrary to the form and effect of his said promise and agreement so by him made with the said plaintiffs in that behalf as aforesaid; by reason whereof, he the said defendant forfeited and became liable to pay to the said plaintiffs the said sum of five pounds in the said agreement mentioned, when he the said defendant should be thereto afterwards requested. And whereas also afterwards, to wit, on first day of August 1772, at Maidstone aforesaid in the said county, in consideration that the said plaintiffs, at the special instance and request of the said defendant, had then and there hired him the said defendant to dredge, pick, and catch oysters for them the said plaintiffs in and upon certain other oyster-grounds and oyster-layings of them the said plaintiff, upon the shores of the manor of M. aforesaid, during the then next season for picking of oysters, if the stock of oysters which the said plaintiffs then had on the said last-mentioned oyster-grounds and oyster-layings should not be all before dredged and caught, at and for certain wages therefore paid by the said plaintiffs to the said defendant, to wit, at and after the rate of per week, for every week of such time, the said defendant undertook, and to the said plaintiffs then and there faithfully promised, to dredge, pick, and catch for them the said plaintiffs in and upon their last-mentioned oyster-grounds and oyster-layings, during the then next season for picking of oysters, if the stock of oysters which the said plaintiffs then had on the said last-mentioned oyster-grounds should not be all before dredged up and caught: And the said plaintiffs in fact say, that the season for picking of oysters next after making the said last-mentioned promise and undertaking of the said John did continue for a long space of time, to wit, from the sixth day of August next after the making of the said last-mentioned promise and undertaking of the said defendant, until and upon the thirty-first day of November 1772; and that the said stock of oysters which the said plaintiffs had on their said last-mentioned oyster-grounds and oyster-layings, at the time of mak-

ing of the said last-mentioned promise and undertaking of the said defendant, are not yet all dredged up and caught: Yet the said defendant, not regarding, &c. did not dredge, pick, and catch oysters for them the said plaintiffs in and upon their said last-mentioned oyster-grounds and oyster-layings during the said last-mentioned season for picking oysters, and during any part of that time, but to dredge, pick, or catch these, he the said defendant, during the time last aforesaid, wholly neglected and refused, that is to say, at M. aforesaid in the said county. (3d and 4th Counts, money paid, and had, and received; breach.)

The agreement appears to me to be a good one, and may be given in evidence to prove the first Count of this declaration; however, if any difficulty should

arise with respect to the written agreement, I have added another Count, which most probably can be proved by *vice* evidence.

F. BULLER.

Declaration on special agreement, for not paying plaintiff for writing essays, and being editor of a newspaper.

Any day about the time.

MIDDLESEX, ss. Arthur Charles Mansell complains of Josiah Millidge, being, &c. of a plea of trespass on the case, &c.: for that whereas said defendant, before and at the time of the making of the agreement hereafter next mentioned, was the printer and publisher of a certain newspaper called *The Westminster Gazette*: and thereupon, whilst said defendant was such printer and publisher of the said newspaper, to wit, on the day of in A. D. at Westminster, in the county of Middlesex, it was agreed by and between said plaintiff and said defendant, that said plaintiff should and would from week to week, for so long a time as it should please them said plaintiff and defendant, compose and write certain essays and postscripts for the said defendant, to be by him printed and published in the said newspaper; and further, that the said plaintiff should take upon him the care, conduct, and management of the said newspaper, as editor thereof, from week to week, for so long a time as it should please said plaintiff and defendant; and also, that said plaintiff should write certain other essays for said defendant when by him requested, to print and publish; and that said defendant would and should pay unto said plaintiff as follows, *i. e.* the sum of one pound one shilling by the week, for every week that he should so write essays and postscripts for the said defendant, to be by him printed and published in the aforesaid newspaper, the sum of two pounds two shillings by the week, for every week that he the said plaintiff should so take the care of conducting and managing the said newspaper, as editor thereof, and also the sum of ten shillings and sixpence by the essay, for each and every of the said other essays which said plaintiff should write for said defendant, to be by him printed and published; and the said agreement being so made (mutual promises): And the said plaintiff in fact saith, that he, confiding in the said promise and undertaking of said defendant, did, according to the tenor of the said agreement from week to week, for divers, to wit, sixteen weeks, *i. e.* next after the making of the said agreement, on the request of the said defendant, compose and write

write divers essays and postscripts for said defendant, to be by him printed and published in the aforesaid newspaper, whereby the said defendant, according to the tenor of his promise, became liable to pay to the said plaintiff the sum of sixteen pounds sixteen shillings; being at and after the rate of one pound one shilling for every week of the said sixteen weeks; and that the said plaintiff did, according to the tenor of said agreement after the making of the same, to wit, on the same day and year aforesaid, take upon himself the care, conduct, and management of the said newspaper, called, &c. to wit, as editor thereof; and continued to have and take the care, &c. of the same, as editor thereof, for divers, to wit, four weeks; whereby said defendant, according (&c. as before, only varying as the agreement does, then go on thus): And that said plaintiff did, according to the tenor of said agreement, after the making thereof, to wit, on the first of November 1776 aforesaid, compose and write for said defendant, at his request, divers other essays, to wit, six other essays, whereby, &c. &c. &c. to wit, at Westminster aforesaid; of all which said premises said defendant afterwards, to wit, on sixteenth of January A. D. 1777, at Westminster, had notice: Yet said defendant not regarding, &c. but contriving, &c. hath not yet paid said several sums of sixteen pounds sixteen shillings, eight pounds eight shillings, and three pounds three shillings, or any part thereof, to, &c. (although, &c.); but, &c. (two Counts for work and labour; money laid out, lent, had, and received, and account stated; common conclusion to six last Counts; damages sixty pounds; suit, &c.; pledges.)

J. MORGAN,

MIDDLESEX, *ff.* Ann Andrews complains of Francis Legge, Esquire, being in the custody of, &c.: for that whereas, on the third day of August A. D. 1773, to wit, at Westminster, in the said county of Middlesex, in consideration that the said Ann, at the special instance and request of the said Francis, would enter into the service of the said Francis as a menial domestic servant, to wit, as cook, and would go with the said Francis in the aforesaid capacity into parts beyond the seas, that is to say, to Halifax, in the province of Nova Scotia, in North America, and there continue in the same capacity with, and to serve the said Francis therein for certain wages or salary, to be therefore paid by the said Francis to the said Ann, he the said Francis afterwards, to wit, on the same day and year aforesaid, at Westminster aforesaid, undertook, and faithfully promised the said Ann, that if he the said Francis should discharge the said Ann from his service abroad, to wit, in parts beyond the seas, he the said Francis would pay her passage back to England: And the said Ann in fact faith, that she, confiding in the said promise and undertaking of the said Francis, so by him made in this behalf as aforesaid, did afterwards, to wit, on the third day of August in the year 1773 aforesaid, at Westminster aforesaid, enter, and was received into the service of the

Declaration, in consideration of plaintiff's entering into defendant's service, and going abroad, defendant undertook, in case he discharged her abroad, to pay her passage back.

ASSUMPSIT SPECIAL.—TO PERFORM WORKS;

Quare, at Westminster, &c.

the said Francis as such menial and domestic servant, to wit, as cook, to serve him in such capacity; and afterwards, and whilst she continued in the service of the said Francis in such capacity as aforesaid, to wit, on the first day of September in the year 1773 aforesaid, set sail and departed from England for Halifax aforesaid, in the service of the said Francis in the capacity aforesaid, and afterwards, to wit, on the first day of November, in the year 1773, arrived at Halifax aforesaid, in the service of the said Francis in the capacity aforesaid, and there stayed and continued in the service of the said Francis in such capacity as aforesaid, for a long time, and until he the said Francis afterwards, and whilst the said Ann was abroad in parts beyond the seas, to wit, at Halifax aforesaid, to wit, on the eighth day of December, in the year 1773 aforesaid, discharged the said Ann from his service, to wit, at W. aforesaid; and although the said Ann, after her discharge from the service of the said Francis, to wit, on the same day and year last aforesaid, at Halifax aforesaid, requested the said Francis to pay her passage back to England, according to the tenor of his promise aforesaid; and although she the said Ann afterwards, to wit, on the second day of December in the year 1773 aforesaid, set sail and departed from Halifax aforesaid for England, and afterwards, to wit, on the first day of February in A. D. 1774, arrived in England, to wit, at Westminster aforesaid; and although the said Francis had due notice of all and singular the premises aforesaid: Yet the said Francis, not regarding his said promise and undertaking, so by him made in this behalf as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Ann in this behalf, did not pay for the passage of the said Ann from Halifax aforesaid to England, according to the tenor of his promise aforesaid (although so to do he the said Thomas was requested by the said Ann, afterwards, to wit, on, &c. at Westminster aforesaid); but he to do this hath hitherto wholly refused; by means whereof the said Ann was necessarily forced and obliged to lay out and expend, and did lay out and expend, a large sum of money, to wit, the sum of fifty pounds, in procuring and getting a passage back to England, to wit, at Westminster aforesaid. (2d Count, in consideration she had entered, &c.; 3d Count, she being in his service, in consideration she would go abroad with him in that capacity, he promised, &c.; 4th Count, money laid out, lent, and had and received, &c. &c.) J. MORGAN.

Declaration against a broker, for not entering goods at the custom-house for exportation (though he had

LONDON, *J.* Gaspar Moretti and N. Ryke complain against Paul Metivier, being, &c.: for that whereas the said G. and N. on the first day of December A. D. 1767, at L. aforesaid, in the parish of St. Mary-le-Bow, in the ward of Cheap, were possessed of divers, to wit, twenty-five bales of safflower, of (though he had charged plaintiffs with the duty), whereby they were seized. 1st Count, That plaintiffs employed defendant as broker or agent to ship goods, pay duties on shipping and exporting; and defendant in consideration undertook so to do; nevertheless, &c. he put goods on board without paying, &c.; by means whereof the goods were forfeited, seized, and condemned.

great

great value, to wit, of the value of one thousand pounds: And whereas the said Paul, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, was a sworn broker; and the said Paul being such sworn broker as aforesaid, and the said G. and N. being possessed of the said bales of safflower, they the said G. and N. afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, employed the said Paul, as the broker or agent of the said G. and N. to ship and put the said bales of safflower on board some ship or vessel sailing from the port of L. aforesaid to Venice, in parts beyond the seas, to be carried in such ship or vessel from L. aforesaid to Venice aforesaid, and to pay the duties due and payable to our lord the king on the shipping and exporting thereof, and then and there delivered the said parcel for the purpose aforesaid; and the said Paul in consideration thereof, then and there, to wit, on the same day and year aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said G. and N. then and there faithfully promised, to ship and put the same on board some ship or vessel sailing from London aforesaid to Venice aforesaid, to be carried in such ship or vessel from L. aforesaid to V. aforesaid, and to pay the duties due and payable to our lord the king on the shipping and exporting thereof: Nevertheless the said P. not regarding his said promise and undertaking by him in that behalf made as aforesaid, but contriving and fraudulently intending to injure the said G. and N. in this behalf, afterwards, to wit, on the same day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, wrongfully and injuriously shipped and put the said goods on board a certain vessel then about to sail from L. aforesaid to V. aforesaid, without paying the duties due and payable to the said lord the king in that behalf; by means whereof the same goods became forfeited to the use of our said lord the king, and afterwards, to wit, on the said first day of December, in the said A. D. 1767, at L. aforesaid, in the parish and ward aforesaid, were seized and condemned for the cause aforesaid, and were wholly lost to the said G. and N. that is to say, at L. aforesaid, in the parish and ward aforesaid. And whereas the said G. and N. afterwards, &c. were possessed of other twenty-five bales of safflower of great value, of one thousand pounds; and being so possessed thereof, they the said G. and N. afterwards, to wit, on, &c. employed the said Paul, as the servant or agent of the said G. and N. for a reasonable reward to be therefore paid by the said G. and N. to the said Paul, to ship and put the said last-mentioned bales of safflower on board some ship or vessel sailing from, &c. to, &c. aforesaid, in parts beyond the seas, to be carried in such ship or vessel sailing from, &c. to, &c. and to tender and pay the duties due and payable to our said lord the king on the shipping and exporting thereof *to the officers of our said lord the king, to whom the said duties ought to be paid or tendered, or to agree for the same, at or in the custom-house of our said lord the king, and then and there delivered the said last-mentioned goods to the said Paul for the*

2d Count,
That defendant,
as servant or
agent of plain-
tiff, for a rea-
sonable reward,
&c. undertook
to pay the du-
ties, &c. to the
officers to whom
the duties ought
to be paid, or
to agree for the
same at the cus-
tom-house for
the shipping and
exporting of
goods.

purpose aforesaid; and the said Paul, in consideration thereof, then and there, to wit, on the same day, &c. undertook, &c. to ship and put the same goods on board some ship or vessel sailing from, &c. to Venice aforesaid, to be carried in such ship or vessel from, &c. to, &c. and to pay or tender the duties due and payable to our said lord the king, on the shipping and exportation thereof, *to the officers of our said lord the king, to whom, &c.*: Nevertheless the said Paul, not regarding his said promise and undertaking by him made in that behalf as aforesaid, but contriving and fraudulently intending to injure the said G. and N. in this behalf, *and to cause the same goods to be seized for want of the duty being paid, and thereby to cause the said G. and N. to lose the said goods,* afterwards, to wit, on the same day, &c. wrongfully and injuriously shipped and put the said goods on board a certain vessel then about to sail from L. aforesaid to V. aforesaid, without paying or tendering the duties due and payable to our said lord the king in that behalf *to any collector, comptroller, or surveyor of our said lord the king, to whom the said duties ought to be paid or tendered, or to any other officer of our said lord the king, and without agreeing for the same at or in the custom-house of our said lord the king;* by means whereof the said last-mentioned goods became forfeited, &c.

3d Count say, "on the shipping and exporting thereof," instead of "in that behalf."

That defendant, as servant or agent, for a reasonable premium, undertook to pay the duties, &c. for the shipping and exporting of goods.

4th Count, That defendant undertook to ship goods for plaintiffs, which they had delivered to defendant, and to pay the duties to, &c. to the collector, &c. to whom, &c. or to agree for the same on the shipping thereof.

5th Count, That defendant undertook to

pay the duties due and payable to our lord the king, without saying to the collector to whom the same ought to be paid.

(3d Count the same as the last, only omitting what is in italic). And whereas the said defendant afterwards, to wit, on the same day, &c. undertook, and to the said plaintiffs then and there faithfully promised to ship and put divers, to wit, twenty-five other bales of flaxseed which they the said plaintiffs had then and there delivered to the said defendant on board some ship or vessel sailing from L. aforesaid to V. aforesaid, to be carried in such ship or vessel from L. aforesaid to V. aforesaid, and to pay or tender the duties due and payable to our said lord the king, on the shipping and exporting thereof, *to the collector, comptroller, or surveyor of our said lord the king, to whom the said duties ought to be paid or tendered, or to agree for the same in the custom-house of our said lord the king;* Nevertheless the said defendant not regarding his said last-mentioned promise and undertaking, &c. but contriving and fraudulently intending to injure the said G. and N. in this behalf, afterwards, to wit, on the same day, &c. fraudulently, wrongfully, and injuriously shipped and put the said last-mentioned goods on board a certain ship or vessel, then about to sail from L. aforesaid to V. aforesaid, without paying or tendering the duties due and payable to our said lord the king, on the shipping and exporting thereof, *to any collector, comptroller, or surveyor of our said lord the king, to whom such duties ought to have been paid, or to any other officer of our said lord the king, and without agreeing for the same at or in the custom-house of our said lord the king;* by means whereof the said last-mentioned goods became forfeited, &c.

(5th Count the same as the last, only omitting what is in italic; 6th Count, one thousand pounds money paid, laid out, and expended; 7th Count, one thousand pounds money had and received): Never-

the said defendant, not regarding his said two last mentioned promises, &c. hath not paid the said two last-mentioned sums of money, to the damages of plaintiffs one thousand pounds, &c. F. BULLER,

Declaration in B. R. in special assumpsit for a witnesses expences from London to York, subpoenaed on part of defendant, as plaintiff in a former suit there to be tried.

FOR that whereas, before and at the time of the making of the promise and undertaking of the said Stephen hereinafter next mentioned, a certain issue in a certain action or suit before then commenced, and then depending, at the suit of the said Stephen, against one Jeremiah Barltow, gentleman, in the court of our lord the king, before the king himself, was intended and about to be tried at the then next ensuing assizes, to be held at the castle of York, in and for the county of York, in which said action or suit, a certain writ of our said lord the king, called a *subpœna*, had been and was served upon the said Thomas, whereby the said Thomas was commanded to be and appear in his proper person before the justices of our lord the king, assigned to hold the assizes at the castle of York, in and for the county of York, on a certain day therein mentioned, then and there to testify all and singular those things which he knew in the said action so depending between the said Stephen and the said Jeremiah Barltow, on the part of the plaintiff (that is to say, the said Stephen) to be tried by a jury of the county: and thereupon the said issue so joined as aforesaid, being intended and about to be tried as aforesaid, and the said Thomas having been so served with such writ of *subpœna* on behalf of the said Stephen, in the said cause as aforesaid, and he being at a considerable distance from the said city of York (that is to say, at the city of London), heretofore, and before the commencement of the said ensuing assizes, to be held at the castle of York, in and for the county of York, to wit, on the twenty-fifth day of June, in the year of Our Lord 1788, at Westminster, in the county of Middlesex, in consideration that the said Thomas, at the special instance and request of the said Stephen, would go down to the assizes so about to be held at the castle of York, in and for the county of York, in order to be examined as a witness on the trial of the said issue, in obedience to the said writ of *subpœna*, he the said Stephen undertook, and then and there faithfully promised the said Thomas, that he the said Stephen would pay to the said Thomas the reasonable expences which he the said Thomas should sustain and be put to on occasion of such journey to and from York (that is to say, from London to the said city of York), and so from thence back again to London in that behalf (whether the said cause so at issue as aforesaid should be brought on to be tried or not): And the said Thomas further saith, that the next ensuing assizes at the castle of York, in and for the county of York, next after the making of the said promise and undertaking, and at which the said issue so joined, as last aforesaid, was expected to be tried as aforesaid, were afterwards, to wit, on the fifth day of July, in the year of Our Lord 1788, held in and for the county of York, to wit, at

the castle of York, in and for the county of York aforesaid: And the said Thomas avers, that he, confiding in the said promise and undertaking of the said Stephen, so by him in that behalf made as aforesaid, did, after the making thereof, and before the commencement of the said next assizes in and for the county of York, to wit, on the day and year aforesaid, at Westminster aforesaid, in the said county of Middlesex, go and travel from London aforesaid to the city of York, and did stay, remain, and continue in the said city of York, a necessary and due space of time for the purpose aforesaid (that is to say, whilst and during the continuance of the said assizes, which were then so held in and for the county of York, next after the making of the said promise and undertaking of the said Stephen), and afterwards travelled and returned from thence back again to London; and the said Thomas was, during all the time of the said assizes, there ready and willing to be examined as a witness upon the trial of the said issue, in obedience to the said writ of *subpœna*; and the said Thomas, in going and performing the said journey to and from York, and during his continuance there on the occasion and for the purpose aforesaid, was necessarily and unavoidably forced and obliged to lay out and expend, and did lay out and expend, divers sums of money, and the reasonable expences of him the said Thomas by him sustained, and to which he was put on occasion of the said journey in that behalf, amounted to a large sum of money, to wit, the sum of fifty pounds of like lawful money, to wit, at Westminster aforesaid, in the said county of Middlesex; whereof the said Stephen afterwards, to wit, on the first day of November in the year 1788 aforesaid, there had notice: Yet the said Stephen, not regarding his said promise and undertaking, so by him in manner and form aforesaid made, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas in this behalf, hath not as yet paid to him the said Thomas the said sum of fifty pounds, or any other sum of money whatsoever, for the reasonable expences by him the said Thomas sustained, and to which he was put on occasion of the said journey to and from York aforesaid, although so to do he the said Stephen was requested by the said Thomas, afterwards, to wit, on the day and year aforesaid, and often afterwards, to wit, at Westminster aforesaid, in the said county of Middlesex; but he to pay the reasonable expences of the said Thomas by him sustained, and to which he was put on occasion of the said journey of the said Thomas to and from York, or any part thereof, or in any way to satisfy the said Thomas for the same, hath hitherto wholly refused, and still doth refuse, contrary to the said promise and undertaking of the said Stephen by him in that behalf made as aforesaid, to wit, at Westminster aforesaid, in the said county of Middlesex. (Common Counts for work and labour, journeys and attendance, and common money Counts; damages one hundred pounds.)

Plea, general
issue to part,
and tender to
residue.

And the said Stephen, by Benjamin Clarkson, his attorney, comes and defends the wrong and injury, when, &c. and as to all the said promises in the said declaration mentioned (except as to

nine

nine pounds nine shillings, parcel of the said several sums of money in the said declaration mentioned; says, that he did not undertake or promise in manner and form as the said Thomas hath above thereof complained against him; and of this he puts himself upon the country, &c.: And as to the said nine pounds nine shillings, the said St phen says, that the said Thomas ought not to have or maintain his afore said action thereof against him to recover any more or greater damages than the said nine pounds nine shillings, on occasion of the not performing of the said promises and undertaking, in the said declaration mentioned, as to the said sum of nine pounds nine shillings; because he says, that the said Stephen always, from the time of the making of the said promises and undertakings as to the said sum of nine pounds nine shillings, hitherto, to wit, at Westminster afore said, in the said county of Middlesex, hath been, and still is, ready and willing to pay to the said Thomas the said sum of nine pounds nine shillings; and that he the said Stephen, after the making of the said promises and undertakings as to said nine pounds nine shillings, and before the day of exhibiting the bill of the said Thomas, to wit, on the same day and year in the said declaration last mentioned, at Westminster afore said, offered to pay, and tendered to the said Thomas, the said sum of nine pounds nine shillings; and that the said Thomas then and there wholly refused to receive the same; and the said Stephen now brings here into court the said nine pounds nine shillings ready to be paid to the said Thomas, if he will receive the same; and this the said Stephen is ready to verify: wherefore he prays judgment if the said Thomas ought to have or maintain his afore said action thereof against the said Stephen, to recover more or greater damages in this behalf than the said nine pounds nine shillings.

W. LAMBE.

I recommend it to the defendant to take out a summons before a judge, that the plaintiff may give the particulars of his demand in writing; then shew it to

the master; and if he doubts about the reasonableness of the money paid or tendered, then to move to wit draw the plea, and pay the money into court. W. L.

And the said Thomas, as to so much of the said plea of the said Stephen, whereof he hath put himself upon the country, doth so likewise; and as to the said plea of the said Stephen, as to the said sum of nine pounds nine shillings, parcel of the said several sums of money in the said declaration mentioned, the said Thomas saith, that he the said Thomas ought not, by any thing in the said plea alleged, to be barred from having his said action maintained against the said Stephen to recover his damages, by reason of the non-payment of the said nine pounds nine shillings, because he says, that before the making of the said promises and undertakings as to the said nine pounds nine shillings, and after the making of the said supposed tender and offer of the said Stephen to the said Thomas, and before the exhibiting the bill of the said Thomas in this behalf, to wit, on the fourteenth day of December, in the year of Our Lord 1789, at Westminster afore said, he the said Thomas requested the said Stephen to pay him the said nine pounds nine shillings, but the said Stephen then and there wholly refused to

pay

Replication to the master to the general issue, and a subsequent demand and refusal to the tender.

pay him; and this he is ready to verify: wherefore he prays judgment, and his damages, by reason of the non-payment of the said nine pounds nine shillings, to be adjudged to him, &c.

Rejoinder, taking issue on the subsequent demand stated in the replication.

And the said Stephen says, that the said Thomas did not request the said Stephen to pay him the said nine pounds nine shillings, in manner and form as the said Thomas, in his replication aforesaid, hath above alledged; and of this he puts himself upon the country, &c.

As all the demands in the declaration are put in issue by the plea of *non assumpsit* to part, I am of opinion, that the plaintiff will be entitled to his full costs, if he proves more than nine pounds nine shillings to be due, notwithstanding he may fail in the proof of his plea of a subsequent demand and refusal of the nine pounds nine shillings tendered; but if the defendant establishes his plea of tender, and the plaintiff neither proves more to

be due, nor a subsequent demand, the defendant will recover his costs. Should the plaintiff have a verdict for more than the nine pounds nine shillings tendered, but less than forty shillings over *, he may be deprived of the costs by the certificate of the judge who tries the cause, under the statute 43. Eliz; but this is seldom granted, unless the cause is very frivolous.

T. BAGGOT.

* Sayer's Law of Costs, 16.

Declaration in palace court at suit of sheriff's officer on *special assumpsit*; in consideration plaintiff would use more than ordinary endeavours to arrest a shy person at defendant's suit, he promised to pay him five guineas; plaintiff did arrest, but defendant refused to pay.

PALACE COURT, *ff.* James Armstrong, by Richard Kelsal, his attorney, complains of John Partridge, in a plea of trespass on the case: for that whereas, before the making of the promise and undertaking of said defendant hereafter next mentioned, to wit, on the twentieth day of April, in Easter term, in the fourteenth year of the reign of our lord the now king, he said defendant, for the recovery of a certain sum of money, to wit, the sum of one hundred and twenty-seven pounds eight shillings and sevenpence, then due and owing to said defendant, from one J. G. sued and prosecuted out of the court of our lord the now king, before the king himself (said court then and still being held at Westminster, in the county of Middlesex), a certain precept of his said present majesty, called a bill of Middlesex, whereby the then sheriff of said county of M. was commanded to take said J. G. if he should be found in his bailiwick, and him safely keep; so that he said then sheriff might have his body before said lord the king, at Westminster, on, &c. then next coming, to answer said defendant in a plea of trespass, and also to a bill of said defendant to be exhibited against said J. G. according to the custom of the court of our lord the king, before the king himself, for two hundred and forty-three pounds, on promises; and that said sheriff should then and there have that precept before the delivery thereof to the then sheriff of M. aforesaid, to be executed as hereafter is mentioned, duly marked or indorsed for bail for one hundred and twenty-seven pounds eight shillings and sevenpence, by virtue of an affidavit of the cause of action of said defendant in that behalf made and filed of record in said court of our said lord the king, before the king himself, at Westminster aforesaid, according to the form of the statute in that behalf made and provided, to wit, at W. in the county of Middlesex, and within the jurisdiction of this court; which said precept, so marked or indorsed for bail as aforesaid,

aid, afterwards, and before the return thereof, and before the making of the promises, &c. of said defendant hereafter next mentioned, to wit, on said twenty-sixth of April, in the fourteenth year aforesaid, at, &c. and within, &c. aforesaid, was delivered by said defendant to Stephen Sayre, esquire, and William Lee, esquire, who then, and from thenceforth until and at and after the return of said precept were sheriffs of said county of Middlesex, to be executed in due form of law; by virtue of which said precept said S. S. esquire, and W. L. esquire, then being sheriff of said county of M. afterwards, and before the return of said writ, before the making of said promise, &c. to wit, on same day and year last aforesaid, for having execution of said precept at, &c. aforesaid, made his certain warrant in writing, under his hand and seal of office of sheriff of county of M. aforesaid, directed to said plaintiffs, John Hyde and Richard Roe, his the said sheriff's bailiffs of the hundred of Ossulston, in the said county, and thereby commanded them, and each and every of them, jointly and severally, that they, or any of them, should take said J. G. if he should be found in the bailiwick of said sheriff, and him safely keep, so that said sheriff might have his body before the lord the king at Westminster, on said Monday next after the Ascension of Our Lord, to answer said defendant in the plea, and to the bill aforesaid, and then and there delivered said warrant to said plaintiff to be executed in due form of law: And said plaintiff further says, that said J. G. long before and at the said time of said delivering of said warrant to be executed as aforesaid, and long afterwards, and until the arrest hereafter mentioned, to wit, at Westminster aforesaid, within the jurisdiction aforesaid, was a very shy person, and difficult to be arrested, and kept out of the way and secreted himself to avoid being arrested, to wit, at, &c. aforesaid, so that he could not be arrested by said plaintiff without said plaintiff's using much greater diligence, pains, and labour, and expending much more money in the attempting to arrest said J. G. by virtue of said warrant, to wit, at, &c. aforesaid; of all which premises said defendant then and there, to wit, on said twenty-sixth of April 1774 aforesaid, to wit, at, &c. aforesaid, had notice: and thereupon said defendant afterwards, to wit, on same day and year last aforesaid, at, &c. aforesaid, in consideration that said plaintiff, at the special instance, &c. of said defendant, would there apply a more than usual and ordinary care and labour, and use his best endeavours to arrest and take said J. G. by virtue of said warrant, at the suit of said defendant, he said defendant undertook, and then and there faithfully promised said plaintiff, to pay him the sum of five guineas for such arresting of said J. G. by virtue of said warrant, at the suit of said defendant, before the return of said writ: And said plaintiff further says, that he said defendant, there, to wit, at, &c. aforesaid, giving credit to said promises, &c. of said defendant, did, after the making of said promises, &c. of said defendant, to wit, on same day and year last aforesaid, and for a long time, to wit, from thence until the fourteenth day of May then

then next following, to wit, at, &c. aforesaid, apply a more than usual and ordinary care and labour, and there during all that time used his best and utmost endeavours to arrest and take said J. G. by virtue of said warrant at suit of said defendant; and by means of such more than usual and ordinary care and labour, and by his so using his best and utmost endeavours for that purpose, he said plaintiff afterwards, and before the return of said writ, to wit, on the fourteenth of May in the year aforesaid, at, &c. aforesaid, did take and arrest said J. G. at suit of said defendant, by virtue of said warrant; of all which said premises he said defendant afterwards, to wit, on same day and year last aforesaid, at Westminster aforesaid, within, &c. aforesaid, had notice; and by reason of the premises, and according to said promises, &c. of said defendant, he said defendant became liable to pay, and ought to have paid, and still ought to pay, to said defendant, said sum of five guineas, to wit, at, &c. aforesaid. (Add Counts for work and labour, &c.; money laid out, &c.; and common conclusion).

The defendant pleaded the general issue, and the cause came on to be tried, and a verdict was found for plaintiff generally; but it was objected by the counsel for the defendant, that the action on the special *assumpsit* would not lie; it was therefore made subject to the opinion of the Court; and the Court seemed to think, that as the verdict was taken generally, and not on any particular

Count, it proved the objection was good. I fancy the action was afterwards discontinued, and doubt much of the legality of the consideration of the special *assumpsit*, and ground my opinion on 2. Rol. Abr. 16. pl. 28. Cro. El. 699. Cro. Jac. 103. 1. Rol. Abr. 16. l. 1. 20. Wms. 408. pl. 669. 1. Rol. Abr. 26. l. 25. Morg. Dig. 565. 1. Ems. 924. Sir W. Jones, 65. Y. Lawes

Declaration in *assumpsit*, on a promise by defendants to allow plaintiff five per cent. as factor, trading with the natives on the coast of Barbary, upon the sale of gums to be purchased or exchanged for the cargo, and that plaintiff was to go out in defendants ship; work and labour; *quantum meruit*; common counts.

LONDON, ss. John Greanell complains of Thomas Wilks and Stephen Wilton, being, &c.: for that whereas heretofore, to wit, on second of May A. D. 1788, at the parish of St. Mary-le-Bow, in the ward of Cheap, in London aforesaid, in consideration that the said John, at the special instance and request of the said Thomas and Stephen, would go out, as an agent or factor for them, in a certain ship or vessel called the Adventure, from the port of London to the coast of Barbary, and would, during the stay of the said ship at the coast of Barbary, transact all matters for the said Thomas and Stephen in trading, bartering, and procuring from the natives, and other residents there, a cargo of gum, or such other articles as the said John might think proper, in exchange for the cargo to be sent out with him by the said Thomas and Stephen, they the said Thomas and Stephen then and there, to wit, on the day and year aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and faithfully promised the said John, to allow him, as a compensation for his time, trouble, or services in that behalf, a commission at and after the rate of five pounds for each and every one hundred pounds of the gross amount of the sales of all such gum, or other articles as he the said John should procure at the said coast, in exchange for the cargo so to be sent out with him as aforesaid, and to pay the said commission to the said John

Soon after the return of the said ship to the said port of L. as a le of the gum, or other articles as should be so procured by the id John, could be made: And the said John says, that he, con- ding in the said promise and undertaking of the said Thomas and tephen, did afterwards, to wit, on the day and year last afore- id, go out as such agent and factor for the said Thomas and tephen in the said ship, from the said port of L. towards and for ie said coast of Barbary, with a certain cargo sent out with him y the said Thomas and Stephen: and afterwards, to wit, on the day of in the year aforesaid, arrived therewith at ie said coast of Barbary, and there stayed with the said ship for a ong space of time, to wit, the space of during which last- entioned time, he the said John procured from the natives and ther residents there a cargo of gum, in exchange for the cargo ent out with him by the said Thomas and Stephen as aforesaid, and ranfacted all matters for the said T. and S. in trading, bartering, and procuring such cargo of gum: And the said John further says, hat the said ship afterwards, to wit, on the day of A. D. 1784, returned with the said last-mentioned cargo on board hereof to the said port of L.; and that the said last-mentioned cargo was afterwards, to wit, on the day of in the year last aforesaid, at L. aforesaid, in the parish and ward afore- aid, sold and disposed of by the said T. and S. for a large sum of money, to wit, the sum of five thousand pounds of lawful money of Great Britain; whereby the said T. and S. according to their said promise and undertaking, then and there became liable to pay, and ought to have paid to the said John, a large sum, to wit, the sum of two hundred and fifty pounds of like lawful, &c. being at and after the rate of five pounds for each and every hundred pounds for which the said last mentioned cargo was so sold and disposed of as aforesaid. And whereas, &c. (*Indebitatus* for work and labour; *assumpsit*; *quantum meruit* thereon; common Counts, and conclusion.)

WAGERS, AND MONEY WON AT PLAY.

MIDDLESEX, to wit. Richard Tatterfall at the suit of Declaration in Thomas Dowson: for that whereas, by a certain agreement en- *assumpsit*, the-
tered into between the said Thomas, one A. B. and divers other plaintiff, with
persons, before the making of the promise and undertaking here- several other
inafter next mentioned, to wit, on, &c. a certain race was to be persons, agreed
run over a certain course called the Beacon Course at Newmar- to subscribe 100
ket in the county of C. on the Tuesday of the first Spring meet- guineas each to
half forfeit, one to be named by each subscriber; defendant, in consideration the plaintiff would
permit him to name one for him, and take the winnings, promised to stand the losing; the defendant
named a filly, but drew her, whereby he became liable to pay the forfeit; but he not paying it, the
plaintiff was obliged to pay for him.

ing

ing, which would be held at N. aforesaid A. D. 1786, by and between certain colts or fillies to be named before the end of the Houghton meeting, when yearlings, by the said Thomas, the said A. B. and the said other persons, that is to say, one to be named by the said Thomas, one by the said A. B. and one by each of the said other persons, for one hundred guineas each half forfeit, and each of the said colts to carry in the said race eight stone and three pounds weight, and each of the said fillies to carry in the said race eight stone weight: And whereas the said Thomas, at the time of the making of the promise and undertaking hereinafter mentioned, had not named any colt or filly to run in the said race, but was minded and intended to give up the benefit of his said right of nomination to any person willing to take the same; whereas the said Richard had notice: and thereupon afterwards, and before the time appointed for naming such colts or fillies was past, to wit, on, &c. at, &c. in, &c. in consideration that the said Thomas, at the special instance and request of the said Richard, would not name any colt or filly to run in the said race, but would permit the said defendant to name a colt or filly to run in the said race in the name of him the said Thomas, and would give up to the said defendant all the benefit which could or might arise to him the said plaintiff by reason of the said agreement and his said right of nomination; and all his the said Thomas's interest therein, in case the said colt or filly, so to be named by the said Richard, should win the said race, he the said Richard undertook, and then and there faithfully promised the said Thomas, well and truly to pay all and every such sum or sums of money as should or might become payable by the said Thomas, for and in respect of the said agreement, and of his concern in the said race, to such person or persons as the same shall become payable to: And the said Thomas in fact says, that he did not name any colt or filly to run in the said race; but permitted the said Richard to name a colt or filly in the said race, in the name of him the said Thomas; and that the said Richard, afterwards, to wit, on, &c. at, &c. named a certain filly of him the said Richard, "by the description of Mr. Dowson's (meaning thereby the "said Thomas's) brown filly, by Highflyer dam, by Snap out of "Spitfire's dam," to run in the said race in the name of him the said Thomas: And the said Thomas in fact says, that on Tuesday of the first Spring meeting at N. aforesaid, to wit, on, &c. the said race was run over the Beacon Course aforesaid, and that a certain colt of the said A. B. called Spartacus, duly named by him to run in the said race, ran therein, carrying such weight as in that behalf is above mentioned, and won the said race, and prevailed against the other colts and fillies which started and ran therein, to wit, at, &c.: And the said Thomas further saith, that the said filly named by the said Richard as aforesaid was not ready to start, nor did start, in the said race, to wit, at, &c. whereby the sum of fifty guineas became payable to the said A. B. being the owner and namer of the winning colt aforesaid, by the said Thomas, under and by virtue of the said agreement, half forfeit for this, that the

the said filly, so named in the name of the said Thomas, did not start in the said race; which said sum of fifty guineas the said Richard ought to have paid to the said A. B. according to his said promise and undertaking, but from thence hitherto hath wholly neglected and refused so to do; by reason of which said premises the said Thomas afterwards, to wit, on, &c. at, &c. was obliged to pay, and did pay, the said sum of fifty guineas to the said A. B.; whereof the said Richard afterwards, to wit, on, &c. there had notice: Yet the said Richard hath not paid the said sum of fifty guineas, or any part thereof, although often requested, but to pay the same to the said Thomas hath hitherto wholly refused, and still doth refuse. (2d Count, money had and received, and common conclusion to that. Damages one hundred pounds.)

As to the propriety of this expression, vide 4. Mod. 409. and 5. Mod. 1.

Mr. Barrow drew "the general issue" to the above declaration, and gave the following opinion:

From all the consideration I have been able to give this case, I can find no pretence to object to the legality of the contract upon which the action is founded; to be illegal, it must be either a running by horses for the money, or a betting upon the race, and the sum lost must exceed one hundred pounds upon tick or credit, and not be ready money; and then it would be void on the statute 16. Car. 2. cap. 7.; but this transaction is neither a stake to be determined on a

race between the parties, nor a betting upon any race, but a collateral agreement to reimburse the plaintiff what he might lose in consideration of his permitting the defendant to name a horse for him, and that he would give up his right to what the horse might win: but even were it within the 16. Car. 2. c. 7. yet the subsequent acts of 13. Geo. 2. c. 13. f. 24 and 18. Geo. 2. c. 34. f. 21. take it out of it, for by these acts it is lawful to run for fifty pounds and upwards. I have therefore drawn the general issue.

THO. BARROW.

Vide 4. Mod. 410. and 5. Mod. 6.

MIDDLESEX, ss. James Warley, late of Westminster in the county of Middlesex aforesaid, was attached to answer unto John Belton of a plea of trespass on the case, &c.; and thereupon the said John, by A. B. his attorney, complains: that whereas, on the first day of May 1757, at W. aforesaid, the said John and one C. D. of the one side, and the said James and one E. F. of the other side, were about to play together at a certain game with cards called whist: and thereupon the said John, at the special instance and request of the said James, then and there undertook, and faithfully promised the said James, that he the said John would well and truly pay to the said James the sum of pounds of lawful, &c. for every game in which the said James and E. F. should conquer, beat, and overcome the said John and C. D. at the said play; and in consideration thereof, he the said James then and there undertook, and faithfully promised the said John, that he the said James would well and truly pay to the said John the sum of pounds of lawful money for every game in which the said John and the said C. D. should conquer, beat, and overcome the said James and E. F. at the said play; And the said John avers, that the said John and C. D. on the one side, and the said James and E. F. on the other side, did then and there, after the making of the said promise and undertaking, play together at the said game, with cards, called whist, divers, to wit,

Declaration on special assumpsit for money won at whist.

games; and that the said John and the said C. D. did

did then and there conquer, beat, and overcome the said James and the said E. F. in every one of these games at the said play; whereby the said James, according to his promise and undertaking aforesaid, became liable to pay, and ought to pay, to the said John, the sum of seven pounds seven shillings, to wit, at Westminster aforesaid; whereof the said James then and there had notice. And whereas the said John and James (*in simul computasset* for other seven pounds seven shillings, and a Count for twenty pounds for money had and received, &c. &c.)

Declaration in
assumpsit for money won at cards, at the suit of the winner against the loser. *Wid* the case of Smith v. Airy, 3. Salk. 14. 6. Mod. 128. *Id* also 12. Mod. 69. 70. 81. 238.

LONDON, *ss*. Launcelot Denbiggen, late of London, surveyor, was attached to answer unto James Smith in a plea of respals on the case, &c.; and thereupon said plaintiff, by A. B. his attorney, complains: that whereas heretofore, to wit, on, &c. at, &c. in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there agreed and undertaken, and faithfully promised said defendant, to play at cards with him said defendant, and to pay him such sum or sums of money as he said plaintiff should lose to said defendant, by means of his so playing with him said defendant as aforesaid, when he said plaintiff should be thereto requested, he the said defendant then and there, to wit, on the day and year aforesaid, at, &c. aforesaid, agreed to play at cards with him the said plaintiff, and to pay to him said plaintiff all such sum or sums of money as he said defendant should lose to said plaintiff, by means of his so playing with said plaintiff as aforesaid, when he the said defendant should be thereto afterwards requested: And said plaintiff avers, that he, confiding, &c. did afterwards, to wit, on the day and year aforesaid, at L. &c. aforesaid, play at cards with said defendant, who did also then and there play at cards with him said plaintiff; and although said defendant, by means of his so playing at cards with said plaintiff as aforesaid, did then and there lose to him said plaintiff, who did then and there win of and from said defendant divers sums of money, in the whole amounting to a large sum of money, to wit, the sum of nine pounds nineteen shillings and sixpence of lawful, &c. whereof no part was then and there paid to said plaintiff; and although said defendant was requested by said plaintiff to pay him said sum of money so by him lost to said plaintiff in manner aforesaid: Yet the said defendant, not regarding his said promise and undertaking, so by him made in manner and form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud said plaintiff in this behalf, did not, nor would at said time when he was so requested as aforesaid, pay, nor hath he at any time hitherto paid, said sum of nine pounds nineteen shillings and sixpence so by him lost to said plaintiff, or any part thereof, to him said plaintiff, but to pay the same, or any part thereof, to said plaintiff, hath hitherto wholly refused, and still refuses so to do, to wit, at L. &c. aforesaid. (Count for money had and received, &c.; *in simul computasset*; and common conclusion thereto.)

Drawn by Mr. TIND.

FOR

FOR that whereas, before and at the time of the making of the promise and undertaking of said defendant hereafter next mentioned, a certain race was intended and then shortly about to be run at a certain place called Ascot Heath in the county of, &c. by and between a certain horse called Copperbottom and a certain horse called Little John, for a certain piece of plate of a large value, to wit, of the value of pounds; and thereupon heretofore, to wit, on, &c. at, &c. in consideration that said plaintiff, at the special instance and request of said defendant, had then and there undertaken and faithfully promised said defendant to pay him the sum of ten pounds ten shillings of lawful, &c. in case the said horse called Copperbottom, in the event of the said race, should win the said piece of plate so intended and about to be run for as aforesaid, he said defendant undertook, and then and there faithfully promised said plaintiff, to pay him the sum of ten pounds ten shillings in case the said horse called Copperbottom should not, in the event of the said race, win the said piece of plate so intended and about to be run for as aforesaid: And the said plaintiff in fact says, that the said race so about to be run as aforesaid, was afterwards, to wit, on, &c. accordingly run at the said place called, &c. by and between the said horse called Copperbottom and the said horse called Little John, for the said piece of plate so intended and about to be run for as aforesaid, and that in the event of the said race the said horse called Copperbottom did not win the said piece of plate, for that the same was then and there won by the said horse called Little John; whereof said defendant, on, &c. at, &c. had notice; and by means thereof, and according to the tenor and effect of said promise, &c. became liable to pay, &c. &c. (A Count for money had and received; account stated; and common conclusion.)

V. LAWES,

RESPECTING SECURITIES.

FOR that whereas, at the time of the making of the promises, &c. of said defendant hereafter mentioned, one Peter O'Brien, esquire, was indebted to said plaintiff in a large sum of money, to wit, the sum of two hundred pounds of lawful, &c. for the work and labour, care and diligence of him said plaintiff, by him before that time done and performed, and bestowed in and about the business of said P. O. and for the said P. O. and at his special instance and request; and also for money by said plaintiff before that time laid out, expended, and paid for said P. O. at his like special instance and request; and said P. O. being so indebted, he said plaintiff, before the making of the promises, &c. of said defendant hereafter mentioned, was possessed of and had in his custody divers writings, accounts, deeds, and other papers belonging to and being

Declaration in
special assumpsit,
in consideration
that plaintiff
would deliver
up to P. certain
writings, &c.
belonging to P.
which plaintiff
detained as a
security for a
debt due to him
from plaintiff,
defendant un-
dertook to see
him paid.

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the property of said P. O. and which said plaintiff then and then had a right to detain in his custody until said money so owing to him should be paid; and said P. O. being so indebted, and said plaintiff being so possessed of said deeds, writings, accounts, and papers, and they said defendant and P. O. being desirous of having the same out of the hands and possession of him said plaintiff, on the fifth of May 1753, at, &c. aforesaid, in consideration that said plaintiff, at the special instance, &c. of said defendant, would deliver up unto said P. O. all and singular the aforesaid deeds, writings, accounts, and papers. he said defendant undertook, and then and there faithfully promised said plaintiff, that he said defendant would take care and have said plaintiff paid his above mentioned demand on said P. O.: And said plaintiff avers, that he, confiding in the aforesaid promise and undertaking of said defendant, afterwards, to wit, on the seventh of May in the year aforesaid, at, &c. aforesaid, at the said special instance, &c. of said defendant, delivered unto said P. O. all and singular the aforesaid deeds, writings, accounts, and papers; whereof defendant then and there had notice: Yet said defendant, not regarding his promise and undertaking aforesaid, but contriving, &c. to deceive and defraud said plaintiff in this behalf, hath not as yet taken care to have said plaintiff paid or satisfied his above demand on said P. O. nor hath said P. O. or said defendant, or any other person whatsoever, yet paid unto him said plaintiff said sum of money so due and owing from said P. O. to said plaintiff, or any part thereof (although said defendant was requested by said plaintiff to perform his aforesaid promise and undertaking so made to said plaintiff as aforesaid, afterwards, to wit, on the first day of June. in the year aforesaid, and often afterwards, at Westminster aforesaid); but he to perform the same in any manner whatsoever, hath hitherto wholly refused, and still refuses. and the aforesaid sum of money so due and owing from said P. O. to said plaintiff as aforesaid, and every part thereof, is still wholly due and unpaid, to wit, to said plaintiff, to the damage of said plaintiff of three hundred pounds; and therefore he brings his suit, &c. (Pledges, &c.)

Declaration, in consideration plaintiff had lent defendant's testator 70l. testator promised either to make a mortgage to plaintiff, or to pay him the money, but did neither.

LEICESTERSHIRE, ss. Thomas Ray Dand, late of, &c. executor of the last will and testament of William John Dand, deceased, was attached to answer John Wilkins of a plea of, &c.; and thereupon, &c.: that whereas in his lifetime, to wit, on, &c. at, &c. in consideration that said plaintiff, at special instance and request of said [defendant's testator], had lent and advanced to [defendant's testator] the sum of twenty pounds, he said [defendant's testator] undertook, &c. promised said plaintiff to make a mortgage therefore to him said plaintiff, or otherwise to pay him said sum of money, with interest for the same, when he the said [defendant's testator] should be thereto afterwards requested. And whereas, &c. (*Indebitatus assumpsit* for money lent, &c.); and being so indebted

indebted, &c. (as before: a Count for seventy pounds lent generally; ditto money had and received): Yet said [defendant's testator] in his lifetime, and said defendant after the death of said [defendant's testator]; not regarding, &c. have not made, nor hath either of them made, a mortgage for said several sums of money in said first and second promises and undertakings mentioned, or of either of them, to said plaintiff, nor have paid, nor hath either of them paid, said several sums of money in said several promises and undertakings above mentioned, or any part thereof, or any of them, to said plaintiff (although, &c.), but they to make that mortgage, or to pay, &c. have hitherto wholly refused, and said defendant still doth refuse. (Damages seventy pounds; suit, &c.)

Drawn by MR. WARREN.

MIDDLESEX, to wit. Joseph Sparkes, John Taylor Vaughan, Peter Thelleston, Emerson Cornwell, and Paul Mayler, surviving assignees of the estate and effects of T. C. and J. H. T. bankrupts, within the true intent and meaning of the statutes made and now in force concerning bankrupts, they the said Joseph, J. T. Vaughan, Peter Emerson, and Paul, having survived one E. S. deceased, complain of W. P. G. gentleman, one of the attorneys of the court of our lord the king, before the king himself, present here in court in his proper person: for that whereas, before and at the time of the making of the promise and undertaking, and of the agreement hereinafter next mentioned, the said plaintiffs, and the said Edward S. deceased, in his lifetime, as assignees of the estate and effects of the said T. C. and J. H. T. after the bankruptcy of the said T. C. and J. H. T. were possessed of certain annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and other papers, securities, and writings, of great value, to wit, of the value of twenty thousand pounds of, &c. which said annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and other paper securities and writings, had before that time, and before the bankruptcy of the said T. C. and J. H. T. been deposited and left in the hands of them the said T. C. and J. H. T. before they became bankrupts, by one Sir T. W. D. baronet, as a collateral security for the repayment of five thousand pounds and upwards, before that time then due and owing from the said Sir T. W. D. to the said T. C. and J. H. T. before their bankruptcy, and whilst said annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and other paper securities and writings, became vested in the plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, and remained and continued in their possession until and at the time herein after mentioned, as a collateral security for the said five thousand pounds and upwards, due and owing from the said Sir T. W. D. to them the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, since the bankruptcy of the said T. C. and J. H. T. to wit, at Westminster,

Declaration by the surviving assignees of bankrupts against defendant, who had undertaken, in consideration that plaintiffs would deliver to one Sir T. W. D. certain annuity-bonds, and other securities, which had been placed in the hands of the bankrupts by Sir T. W. D. as a security for a debt of 5000l. due from him to them, that Sir T. W. D. should either pay the debt, or redeliver the securities to the plaintiff, who did neither,

in the county aforesaid; and the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, being so possessed of the said annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and papers, securities, and writings as aforesaid; and the said sum of five thousand pounds and upwards being wholly due and unpaid as aforesaid, afterwards, to wit, on the nineteenth of April 1783, to wit, at Westminster aforesaid, in the county aforesaid, in consideration that the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, at the special instance and request of the said defendant, would deliver to the said Sir T. W. D. the said several annuity-bonds, warrants of attorney for judgments, mesne assignments, and papers, securities, and writings above mentioned, in order for the said Sir T. W. D. to obtain and procure the payment of the several sums of money due and owing upon the said several annuity-bonds, warrants of attorney for judgments, the several mesne assignments thereof, and papers, securities, and writings before mentioned, he the said defendant undertook, and to the said plaintiffs and the said E. S. deceased, assignees as aforesaid, then and there faithfully promised, to engage and guarantee, that the said Sir T. W. D. should and would well and truly pay, or cause to be paid, unto the said plaintiffs and the said E. S. deceased, in his lifetime, assignees aforesaid, one full moiety or half part of all such sum or sums of money which he the said Sir T. W. D. should or might recover, obtain, or receive, on or by virtue of the said annuity-bonds, or either of them, after deducting the expences incurred in obtaining and getting in the same in part payment of the said debt of five thousand pounds so due and owing to them the said plaintiffs and the said E. S. deceased, in his lifetime, as assignees as aforesaid; and further, that in case the said Sir T. W. D. should not be able to procure payment of the whole, or some part of the said annuity-bonds within the space of one year from the said nineteenth of April 1783, that then he the said Sir T. W. D. should and would re-deliver back to them the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, the said annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and papers, securities, and writings before mentioned, entire and uncanceled, provided that in case the said Sir T. W. D. should pay, or cause to be paid, unto them the said plaintiffs and the said E. S. deceased, assignees as aforesaid, either by sale of certain estates of the said Sir T. W. D. at Ayr in the kingdom of Scotland, or otherwise, the whole of the said sum of five thousand pounds and upwards, so due to them as aforesaid, within the space of one year, that then the said annuity-bonds, warrants of attorney, and mesne assignments thereof, and papers, securities, and writings before mentioned, should remain in the hands of him the said T. W. D. as his own property: And the said plaintiffs, surviving assignees as aforesaid, in fact say, that they the said plaintiffs and the said E. S. deceased, in his lifetime, confiding and relying in the said promise and undertaking of the
said

said defendant, and in hopes of the faithful performance thereof, afterwards, to wit, on the same day and year aforesaid, at W. aforesaid, in the said county, did deliver to the said Sir T. W. D. the said several annuity-bonds, warrants of attorney for judgments, mesne assignments thereof, and other papers, securities, and writings before mentioned, for the purposes before mentioned: And the said plaintiffs, surviving assignees as aforesaid, further say, that the said Sir T. W. D. was not able and did not procure the payment of the whole, some, or any part of the money due and owing upon the said annuity-bonds, within the space of one year from the said nineteenth of April 1783, nor hath he the said Sir T. W. D. paid or caused to be paid unto them the said plaintiffs and the said E. S. deceased, assignees as aforesaid, or to either of them, by sale of the said estate at Ayr in the kingdom of Scotland, or otherwise, the whole or any part of the said debt of five thousand pounds and upwards, so due to them the said plaintiffs and the said E. S. deceased, assignees as aforesaid, within the space of one year from the said nineteenth of April 1783, and the said debt of five thousand pounds and upwards still remains due, in arrear, and unpaid to them by the said Sir T. W. D. to wit, at, &c.: and thereupon afterwards, and after the expiration of the said one year from the said nineteenth of April 1783, to wit, on the first of June 1784, at, &c. they the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, then and there requested the said Sir T. W. D. to deliver back to them the said annuity-bonds, warrants of attorney, mesne assignments thereof, and the papers, writings, and securities before mentioned, so delivered to him for the purposes aforesaid, but the said Sir T. W. D. did not then and there deliver, nor hath he yet delivered the same, or any of them, or any part thereof, to the said plaintiffs and the said E. S. deceased, in his lifetime, assignees as aforesaid, or to any or either of them; but on the contrary thereof, then and there wholly refused, failed, and neglected so to do, and hath hitherto wholly refused, and still doth refuse, to wit, at, &c.; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice; and by reason of the premises, and of his the said defendant's engagement and guarantee so made as aforesaid, and by force and virtue thereof, he the said defendant became liable to answer for such neglect, failure, and refusal of the said Sir T. W. D. and to satisfy them the said plaintiffs and the said E. S. deceased, assignees as aforesaid, for the non-delivery of the said annuity-bonds, &c. by the said Sir T. W. D. to them the said plaintiffs and the said E. S. deceased, assignees as aforesaid, according to the engagement, guarantee, promise, and undertaking, of the said defendant, by him so made as aforesaid, to wit, at, &c.: And the said plaintiffs, surviving assignees as aforesaid, aver, that the said annuity-bonds, &c. so delivered to the said Sir T. W. D. as aforesaid, were of great value, to wit, of the value of twenty thousand pounds of, &c. that is to say, at Westminster, &c.: Yet the said defendant, although often requested, did not make any satisfaction to them the said plaintiffs and the said

E. S. deceased, as assignees as aforesaid, nor hath made any satisfaction to them the said plaintiffs, surviving assignees as aforesaid, since the death of the said E. S. or to any or either of them; but on the contrary thereof, the said defendant hath hitherto altogether refused, and still doth refuse, so to do, to wit, at, &c. (2d Count, money paid, laid out, and expended; 3d ditto, had and received; 4th, account stated; breach to three last Counts; pledges, &c.)

Drawn by MR. CROMPTON.

Declaration against the assignees of a bankrupt, on an agreement with plaintiff, one of bankrupt's creditors, to pay plaintiff so much in the pound upon his demand, out of money to be recovered against a debtor to bankrupt, in consideration of plaintiff's giving up a deed by which bankrupt had assigned the debt to plaintiff.

MIDDLESEX, to wit. Edward Chapman complains of William Hurst, being, &c.: for that whereas, at the time of the making the agreement hereinafter next mentioned, and for the space of three years then last past, the said Edward Chapman and one Joshua Coombs were joint dealers and partners in the trade or business of bricklayers, and as such joint dealers and partners, during all that time, exercised and carried on, and still do exercise and carry on, the trade and business of bricklayers, to wit, at Westminster aforesaid, in the county aforesaid: And whereas also, before the making of the agreement hereinafter next mentioned, one John Alefounder had been employed by one Thomas Sutton, esquire, in and about the making divers repairs, additions, and alterations in a certain messuage or dwelling-house, with the appurtenances, of the said T. Sutton, situate, lying, and being, at, &c. in the said county of Middlesex: And whereas the said John Alefounder, before the making the agreement hereinafter next mentioned, employed the said Edward Chapman and Joshua Coombs, so being joint dealers and partners as aforesaid, as bricklayers, and divers other workmen and labourers, in about the making the said repairs, alterations, and additions; and the said E. Chapman and Joshua Coombs, and the said other workmen and labourers, in pursuance of that had done and performed the said repairs, alterations, and additions: And whereas also the said John Alefounder, afterwards, and before the making of the agreement hereinafter next mentioned (he the said John Alefounder being then indebted to the said Edward Chapman and Joshua Coombs in a large sum of money, to wit, in the sum of one hundred and thirty-two pounds, on account of the making of the repairs, alterations, and additions aforesaid; and being also indebted to divers other workmen and labourers, on the same account, in another large sum of money, and there being also a large sum of money due from the said T. Sutton to the said John Alefounder on account of the making of the said repairs, alterations, and additions), by a certain deed of assignment, bearing date the twenty-seventh day of October A. D. 1768, assigned to the said Edward Chapman all such right and interest as the said John Alefounder was entitled unto in and to the money then remaining due to him the said John Alefounder from the said T. Sutton, in trust and for the benefit of the said Edward Chapman, Joshua Coombs, and the said other workmen and labourers, and to pay them thereout the several sums of money due and owing to them respectively:

by: And whereas also the said John Alefounder, before the making of the agreement hereinafter mentioned, became, within the intent and meaning of the several statutes made and now in force concerning bankrupts, and was in due form of law declared, a bankrupt; and the said William Hurst and one A. B. were in due form of law chosen and appointed assignees of the estate and effects of the said John Alefounder, afterwards, to wit, on the ninth day of January A. D. 1770, at Westminster aforesaid, in the said county; it was agreed by and between the said William Hurst and Edward Chapman in manner and form following, that is to say, the said Edward Chapman, for the considerations hereinafter mentioned, did agree to give up and relinquish unto the said William Hurst, for the benefit of the creditors of the said John Alefounder, the said deed of assignment, together with all such papers and writings as were in the custody of the said Edward Chapman, relative to the said money so due from the said T. Sutton, in order to make out and to support the same; and in consideration thereof the said William Hurst did agree that he and the said other assignees of the said John Alefounder should and would forthwith use their endeavours, and proceed, at law or otherwise, to recover the said money so due and owing from the said T. Sutton to the said John Alefounder as aforesaid; and should and would, upon payment and recovery of the money which should be found due from the said T. Sutton (in case the same should be found sufficient), thereout pay to the said Edward Chapman and his partner Joshua Coombs, fifteen shillings in the pound upon the said debt of one hundred and thirty-two pounds; and also should and would thereout pay to the said Edward Chapman the costs, charges, and expences which he had been at in getting the said work done for the said T. Sutton by the said John Alefounder, and the workmen by him employed, measured and valued; and also should and would thereout pay the bill of costs of Mr. John Blake, who had been employed by the said Edward Chapman touching the said assignment, taking a counsel's opinion thereon, and other business relating thereto: And the said agreement being so made, he the said William Hurst, in consideration that the said Edward Chapman, at the special instance and request of the said William Hurst, had then and there undertook and faithfully promised the said William Hurst to perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled, undertook, and to the said Edward Chapman then and there faithfully promised, to perform and fulfil the said agreement in all things on his part and behalf to be performed and fulfilled: *And the said Edward Chapman in fact says, that the said William Hurst afterwards, to wit, on the first of July 1770, at Westminster aforesaid, in the said county, did recover a large sum of money, to wit, the sum of four hundred pounds, of and from the said Thomas Sutton, for and on account of the said repairs, alterations, and additions, and which said sum of four hundred*

These words are omitted in 2d Count, "out of which defendant might have paid, &c."

2d Count,
Whereas defendant, being assignee of said J. A.
In consideration plaintiff had agreed to give up a deed, whereby bankrupt had assigned to him a debt from
T. S.,

defendant undertook, &c. that he and said other assignee would endeavour to recover from said T. S., and would on recovery (if sufficient) pay plaintiff and J. C. 25s. in the pound;

pounds was then paid to the said William Hurst and A. B. and "out of which the said William Hurst might have paid," and ought to have paid, to the said Edward Chapman fifteen shillings in the pound upon the said debt of one hundred and thirty-two pounds due to the said Edward Chapman and Joshua Coombs as aforesaid, amounting in the whole to a large sum of money, to wit, to the sum of ninety-nine pounds: And the said Edward Chapman in fact further says, that he the said Edward Chapman laid out and expended a large sum of money, to wit, the sum of thirty pounds, in and about the getting the said work done for the said Thomas Sutton by the said John Alefounder, and the workmen by him employed, measured and valued; and that the bill of costs of the said John Blake, amounted to another large sum of money, to wit, the sum of ; whereof the said William Hurst afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county, had notice: And the said Edward Chapman further says, that the said William Hurst and A. B. might also have paid, and ought to have paid, to the said Edward Chapman, out of the said four hundred pounds, the said sum of thirty pounds and pounds, to wit, at Westminster aforesaid, in the said county. And whereas also, the said William Hurst, being one of the assignees of the estate and effects of the said John Alefounder, a bankrupt, afterwards, to wit, on the said ninth day of January in the said A. D. 1770, at Westminster aforesaid, in the said county, in consideration that the said Edward Chapman, at the special instance and request of the said William Hurst, had agreed to give up and relinquish to the said William Hurst, for the benefit of the creditors of the said John Alefounder, a certain other deed of assignment, bearing date the twenty-ninth day of October 1768, whereby the said John Alefounder assigned to the said Edward Chapman all such right and interest as the said John Alefounder was entitled unto, in and to certain other money then remaining due from the said T. Sutton for certain other repairs, additions, and alterations done by the said John Alefounder for the said Thomas Sutton, for the purpose in the said last-mentioned deed mentioned, together also with all such papers and writings as were in the custody of the said Edward Chapman relative to the said last-mentioned money, so due from the said Thomas Sutton, in order to make out and support the same, he the said William Hurst undertook, and to the said Edward Chapman then and there faithfully promised, that he the said William Hurst, and the other assignee of the said estate and effects of the said John Alefounder, should and would forthwith use their endeavours, and proceed at law or otherwise, to recover the money due from the said T. S. to the said John Alefounder as last aforesaid, and should and would upon recovery and payment of the said last-mentioned money, which should be found due from the said T. S. (in case the same should be sufficient), thereout pay to the said Edward Chapman and Joshua Coombs (the said Joshua Coombs then and there being partner with the said Edward Chapman as aforesaid), fifteen shillings in the pound, upon the debt of

one hundred and thirty-two pounds due to them the said Edward Chapman and Joshua Coombs from the said John Alefounder, for other bricklayers and plaisterers work done at the said T. Sutton's; and also should and would thereout pay to the said Edward Chapman the costs, charges, and expences which he had been at in getting the said last-mentioned work done for the said T. S. by the said John Alefounder, and the workmen by him employed, measured and valued; and also should and would pay thereout the bill of costs of Mr. John Blake, who had been employed by the said Edward Chapman touching the said last-mentioned assignment, taking a counsel's opinion thereon, and other business relating thereto: And the said Edward Chapman in fact says, that the said sum of fifteen shillings in the pound on the said debt of one hundred and thirty-two pounds, amounted and came to a large sum of money, to wit, to the sum of ninety-nine pounds: And the said Edward Chapman in fact further says, that the costs, charges, and expences which the said Edward Chapman hath been put to in getting the said last-mentioned work measured and valued, amounted and came to another large sum of money, to wit, the sum of thirty pounds; and that the said last-mentioned bill of costs of the said John Blake, touching the said last-mentioned assignment, taking a counsel's opinion thereon, and other business relating thereto, amounted to another large sum of money, to wit, other of which said premises, afterwards, to wit, the said William Hurst afterwards, to wit, on the same day and year last aforesaid, at Westminster aforesaid, in the said county, had notice: And the said Edward Chapman in fact further says, that the said William Hurst and (so being the other assignee as aforesaid), on the first of July in the said A. D. 1770, at Westminster aforesaid, in the said county, recovered against the said Thomas Sutton for the said last-mentioned repairs, additions, and alterations, another large sum of money, to wit, other four hundred pounds; which said last-mentioned sum was sufficient to pay the said last-mentioned sum of ninety-nine pounds, and thirty pounds, and pounds, which the said William Hurst then and there ought to have paid to the said Edward Chapman and Joshua Coombs, to wit, at Westminster aforesaid, in the said county. And whereas also the said William Hurst afterwards, to wit, &c. (add a Count for two hundred pounds money had and received): Nevertheless the said William Hurst, not regarding his said several promises and undertakings by him made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said Edward Chapman in this behalf, hath not yet paid the said several sums of money, or any of them, or any part thereof, to the said Edward Chapman and Joshua Coombs, or either of them, although often requested so to do; but to pay the same he the said William Hurst hath hitherto wholly refused, and still doth refuse, to the damage of the said Edward Chapman of three hundred pounds; and thereof he brings suit, &c. (Pledges, &c.)

and would pay plaintiff the costs of getting the work measured; and attorney's bill for said deed.

3d Count,

Breach to all the Counts.

F. BULLER.

IN

564 ASSUMPSIT SPECIAL.—IN DEFAULT OF A THIRD PERSON.

Declaration by surviving partners on a promise in writing to pay the debt of another.
1st Count states that defendant promised to be answerable for the money being forthcoming.

LANCASHIRE, to wit. Benjamin Snowden and Thomas Choldwich, surviving partners of Thomas Snowden, deceased, complain of Mark William Cole, being, &c. of a plea of trespass on the case, &c. : for that whereas heretofore, in the lifetime of the said T. S. deceased, to wit, on the eighth day of September A. D. 1790, at Lancaster in the county of Lancaster, in consideration that the said Benjamin, T. C. and T. S. deceased, at the special instance and request of the said Mark William, would sell and deliver to one Robert Stavers certain merchandize, to wit, one hoghead of rum, of a large value, to wit, of the value of twenty-five pounds two shillings of lawful money of Great Britain, he the said Mark William then and there undertook and promised that he the said Mark William would be answerable for the money, that is to say, the price to be paid for the same being forthcoming at the proper time of payment : And the said Benjamin and Thomas aver, that they and the said Thomas Snowden deceased, confiding in the said promise and undertaking of the said Mark William, afterwards, in the lifetime of the said Thomas Snowden deceased, to wit, on the sixteenth of October in the year aforesaid, at L. aforesaid, in the county aforesaid, did, at the said request of the said Mark William, sell and deliver to the said Robert Stavers the said merchandize, being of the value aforesaid, and that the proper time for payment of the same was at the expiration of six months from the said sale and delivery thereof, to wit, at L. aforesaid, in the county aforesaid ; whereof the said Mark W. afterwards, to wit, on the day and year last aforesaid, there had notice ; by reason whereof, and according to the tenor and effect of the said promise and undertaking of the said Mark W. he the said Mark W. became answerable for the said sum of money being forthcoming to the said plaintiffs and the said Thomas Snowden deceased, in the lifetime of the said T. Snowden deceased, at the said proper time of payment of the same. And whereas

2d Count, that money should be regularly paid.

(same as first Count, differing only, defendant undertook *that the money should be regularly paid at the end of six months* ; by reason whereof became liable to the regular payment of the said money for the same last-mentioned merchandize at the end of six months).

3d Count, that plaintiffs might make their charge, and defendant would pay their rider when he went that way.

And whereas (go on as in 1st and 2d Counts till) he the said Mark William then and there undertook and promised the said Benjamin and Thomas and the said T. Snowden deceased, that the money, that is to say, the price for the same, would be regularly paid at the end of six months, and that the said Benjamin and Thomas and the said Thomas Snowden deceased might make their charge to him the said Mark William ; and that he would pay Mr. Coates (meaning one Andrew Coates the then agent or rider for them the said Benjamin and Thomas and T. Snowden to collect their debts : And the said Benjamin and Thomas aver, that they and the said Thomas Snowden deceased, in his lifetime, confiding, &c. (as before), did there make charge to the said Mark William for the same ; whereof, &c. ; by reason whereof, &c. (as before). And whereas (*quantum meruit* for the value

value of hoghead of rum at the end of six months). And whereas (*indebitatus assumpsit* for a hoghead of rum sold and delivered; Count on a *quantum meruit* for goods sold and delivered to Robert Stavers at defendants request; for goods sold to defendant, and according to the terms of such sale, to the said Robert Stavers; for goods sold and delivered to defendant on a *quantum meruit*; money paid, laid out, and expended; lent and advanced; had and received; account stated): Yet the said Mark William, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Benjamin and Thomas and the said Thomas Snowden deceased, in his lifetime, and the said Benjamin and Thomas since his decease, in this behalf, hath not as yet paid the said several sums of money in those promises and undertakings mentioned, or any or either of them, or any part thereof, to the said Benjamin and Thomas and the said Thomas Snowden deceased, in his lifetime, or to the said Benjamin and Thomas since his decease, or to any or either of them, although so to do the said Mark William was requested by the said Benjamin and Thomas and the said T. Snowden deceased, in his lifetime, oftentimes, and by the said Benjamin and Thomas since his decease, and after the said several sums of money became due and payable, to wit, on the fifth day of November in the year 1791, and often afterwards, to wit, at L. aforesaid, in the county aforesaid; but he to pay the same hath hitherto wholly refused, and still doth refuse, and the same are still wholly unpaid unto and for on account of the said Benjamin and Thomas, to the damage of the said Benjamin and Thomas, as such surviving partners as aforesaid, of one hundred pounds; and thereupon they bring their suit, &c. (Pledges, &c.)

Conclusion by two surviving partners, on a promise to pay for the debt of another.

THO. BARROW.

I would recommend students to take a declaration of this sort, very easy for beginners, and frame all the Counts complete, or complete Declarations on each of the Counts, pursuing the first Count on the special Counts; and if at a loss to have recourse to the beginnings and endings of Declarations, &c. which will serve as their own precedents; this being a Declaration most excellently framed, in every day's use, and containing all the Counts in their utmost variety, If the

pupil could have resolution to go through all these Declarations completing the Counts, &c. to his own satisfaction, he would experience great readiness and ease when he draws as a pupil or for himself. I would also recommend to abridge their pleadings, as I have frequently done in this volume, and in such precedents as in page 550, respecting securities; knowing from experience the use of it, though at first apparently difficult.

MIDDLESEX, to wit. J. M. complains of A. F. being, &c.: for that whereas the said J. M. heretofore, to wit, on, &c. and from thence until, and at, and after the making of the several promises and undertakings of the said A. F. hereafter mentioned, exercised and carried on the trade and business of a carver and gilder, and before and at the time of the making of the promise would pay for them, &c. &c. 1st Count states, in consideration that plaintiff would supply defendant's son with goods in the way of his trade, defendant promised to be answerable for the same.

Declaration on several promises made by defendant to plaintiff, that if plaintiff would supply his son with goods he

and

and undertaking of the said A. F. hereafter next mentioned, one W. F. son of the said A. F. also exercised and carried on the said trade and business of a carver and gilder, to wit, at, &c.; and the said J. M. and the said W. F. so respectively exercising and carrying on the said trade and business of a carver and gilder as aforesaid, the said W. F. just before the making of the promise and undertaking of the said A. F. hereafter next mentioned, was desirous of the said J. M. from time to time supplying him with goods in the way of his said trade and business of a carver and gilder; but the said J. M. was unwilling so to do without the said A. F. became security to him for such goods: and thereupon afterwards, to wit, on, &c. at, &c. in consideration that the said J. M. at the special instance and request of the said A. F. would from time to time supply the said W. F. with goods in the way of his said trade and business of a carver and gilder, he the said A. F. undertook, and then and there faithfully promised the said plaintiff, to be answerable to him for such goods: And the said plaintiff in fact says, that he, confiding in the said promise and undertaking of the said defendant, did, after the making thereof, from time to time, for a long space of time, to wit, at, &c. sell to and supply the said W. F. with goods in the way of his said trade and business of a carver and gilder; and that afterwards, and before the exhibiting the bill of the said plaintiff against the said defendant, to wit, on, &c. at, &c. in, &c. there was due and owing to the said plaintiff for such goods, upon the balance of accounts, a certain large sum of money, to wit, the sum of forty-two pounds eleven shillings and a penny of lawful money of Great Britain, which was not then and there paid to the said plaintiff by the said W. F. but suffered to be and continue in arrear and unpaid to him; whereof the said defendant afterwards, to wit, on, &c. at, &c. had notice, and was then and there requested to pay and answer to the said plaintiff for the said sum or balance so due and owing to the said plaintiff as aforesaid, according to the tenor and effect of his aforesaid promise in that behalf, to wit, at, &c.

(1) "25th day of July"

And whereas also heretofore, on the (1) *twenty-fourth day of August* A.D. 1785, at, &c. in, &c. in consideration that the said plaintiff had before that time sold to and supplied the said W. F. with certain other goods in the way of his said trade and business of a carver and gilder; and also in consideration that there remained due and owing to the said plaintiff, for and on account of such goods, upon the balance of accounts, a certain other large sum of money, to wit, the further sum of forty-two pounds eleven shillings and a

(2) "and that the said defendant stood engaged for the payment of the said sum of money, and had had time given him for that purpose, but was desirous of a little longer time, and of paying the same in goods;"

penny of like lawful money; (2) and also in consideration that the said plaintiff, at the like instance and request of the said defendant, would (3) *accept of and take velverets in payment of the said last-mentioned sum of money*, he the said defendant undertook, and then

and had had time given him for that purpose, but was desirous of a little longer time, and of paying the same in goods;" (3) "give him such further time for the payment of the said last-mentioned debt, and also would accept of and take goods,"

and

and there faithfully promised the said plaintiff to pay him the said last-mentioned (1) *balance or sum of money accordingly, that is to say, in velverets, when he the said defendant should be thereto afterwards requested*: And the said plaintiff avers, that he hath always, since the making of the said last-mentioned promise and undertaking of the said defendant hitherto, been ready and willing to accept and take (2) *velverets* in payment of the said (3) *sum of money so due and owing to him as last aforesaid*; and that he, after the making of the said last-mentioned promise and undertaking of the said defendant, to wit, on, &c. requested the said defendant to pay him (4) *such sum of money* accordingly, to wit, at, &c.

payment of the said last-mentioned debt, and that he' (1) "debt accordingly: And the said plaintiff in fact further saith, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did give him such further time as aforesaid for the (2) "goods" (3) last-mentioned debt" (4) "the same"

And whereas, &c. &c. (3d Count like the second, only omitting what is in *Italic*, and inserting what is in the margin.) 3d Count states, in consideration that plaintiff had

supplied defendant's son with *other goods*; and in consideration of another balance being due for the same; and that defendant stood engaged for the payment thereof; and in consideration that plaintiff would give further time to discharge his demand, and would accept goods in payment, defendant promised payment accordingly.

And whereas also heretofore, to wit, on the twenty-third day of December A. D. 1784, at, &c. in, &c. there remained due and owing to the said plaintiff, for and on account of goods before that time sold and supplied to the said W. F. by the said plaintiff, a certain other large sum of money, to wit, the further sum of forty-two pounds eleven shillings and a penny of like lawful money; and the said defendant then and there stood engaged for the payment of such money to the said plaintiff; and being so engaged, he the said plaintiff was desirous of payment thereof; and for that purpose had drawn a certain draft or bill upon the said defendant for his acceptance thereof; and thereupon afterwards, to wit, on, &c. at, &c. in consideration of the several promises last aforesaid, and also in consideration that the said plaintiff, at the special instance and request of the said defendant, would withdraw the said draft or bill, and would forbear and give him the said defendant further time for the payment of the said sum of money so due to him the said plaintiff as last aforesaid, he the said defendant undertook, and then and there faithfully promised the said plaintiff, to pay him the said last-mentioned sum of money within a reasonable space of time then next following: And the said plaintiff in fact saith, that he, confiding in the said last-mentioned promise and undertaking of the said defendant, did, after the making thereof, to wit, on, &c. at, &c. withdraw the said draft or bill, so drawn by him on the said defendant as aforesaid, and did forbear and give further time for the payment thereof unto the said defendant; and that a reasonable space of time for that purpose hath long since elapsed, to wit, at, &c. And whereas also heretofore, to wit, on the nineteenth day of December A. D. 1784, at, &c. in, &c. there then being due on account of such goods a further sum of money, defendant, by a certain note or memorandum, promised payment when requested.

day

day of May A. D. 1784, at, &c. in, &c. in consideration that the said plaintiff, at the like special instance and request of the said defendant, had before that time sold to and supplied the said W.F. with certain other goods in the way of his aforesaid trade of a carver and gilder; and also in consideration that there then remained due and owing to the said plaintiff, for and on account of such goods, upon balance of accounts, a certain other large sum of money, to wit, the sum of forty-forty-two pounds eleven shillings and a penny of like lawful money of Great Britain, he the said defendant, by a certain note or memorandum, made and signed as by the statute in such case made is required, undertook, and then and there faithfully promised the said plaintiff, to pay him the said last-mentioned balance or sum of money, when he the said defendant should be thereto afterwards requested; whereby and by reason of which said several premises he the said defendant became liable to pay to the said plaintiff the said last-mentioned balance or sum of money, according to the tenor of his aforesaid promise in that behalf, to wit, at, &c. 6th Count states, in consideration that plaintiff would sell, at defendant's request, to his son, other goods, defendant promised to pay him for the same and the *pre-existing* debt. 7th Count states, in consideration of the said debt, and of the said defendant's having undertaken for the payment thereof, and in consideration that plaintiff *would* send an affidavit to Manchester to prove the same under a *certain commission of bankrupt* issued against his son, and authorize a third person to receive a dividend under the same for defendant's use, defendant promised to pay the whole debt. 8th Count states, in consideration of the said several promises, and that plaintiff, at defendant's request *would* prove his said debt, and authorize the receipt of a dividend, defendant promised payment of the balance of plaintiff's debt, after deducting the dividends. 9th Count states, in consideration of the debt due to plaintiff, defendant being so engaged for the payment thereof, and of plaintiff's giving time for such payment until January next, and in consideration that plaintiff would assist in procuring a dividend, defendant undertook to pay in January. 10th Count states, in consideration of the said debt, and of defendant's being so engaged as aforesaid, and of plaintiff's giving further time, and in consideration that plaintiff would endeavour to procure a dividend, defendant undertook to see him paid, and to make up to him the whole of his said demand upon a dividend taking place. Add all the common counts; an account stated; and conclude): Yet the said defendant, not regarding his said several promises and undertakings so by him made as aforesaid, but contriving, &c. hath not paid to the said plaintiff the said several sums of money in those promises and undertakings mentioned, and thereby agreed to be paid by the said defendant to the said plaintiff, or any or either of them, or any part thereof, either in the manner in the said promises and undertakings respectively

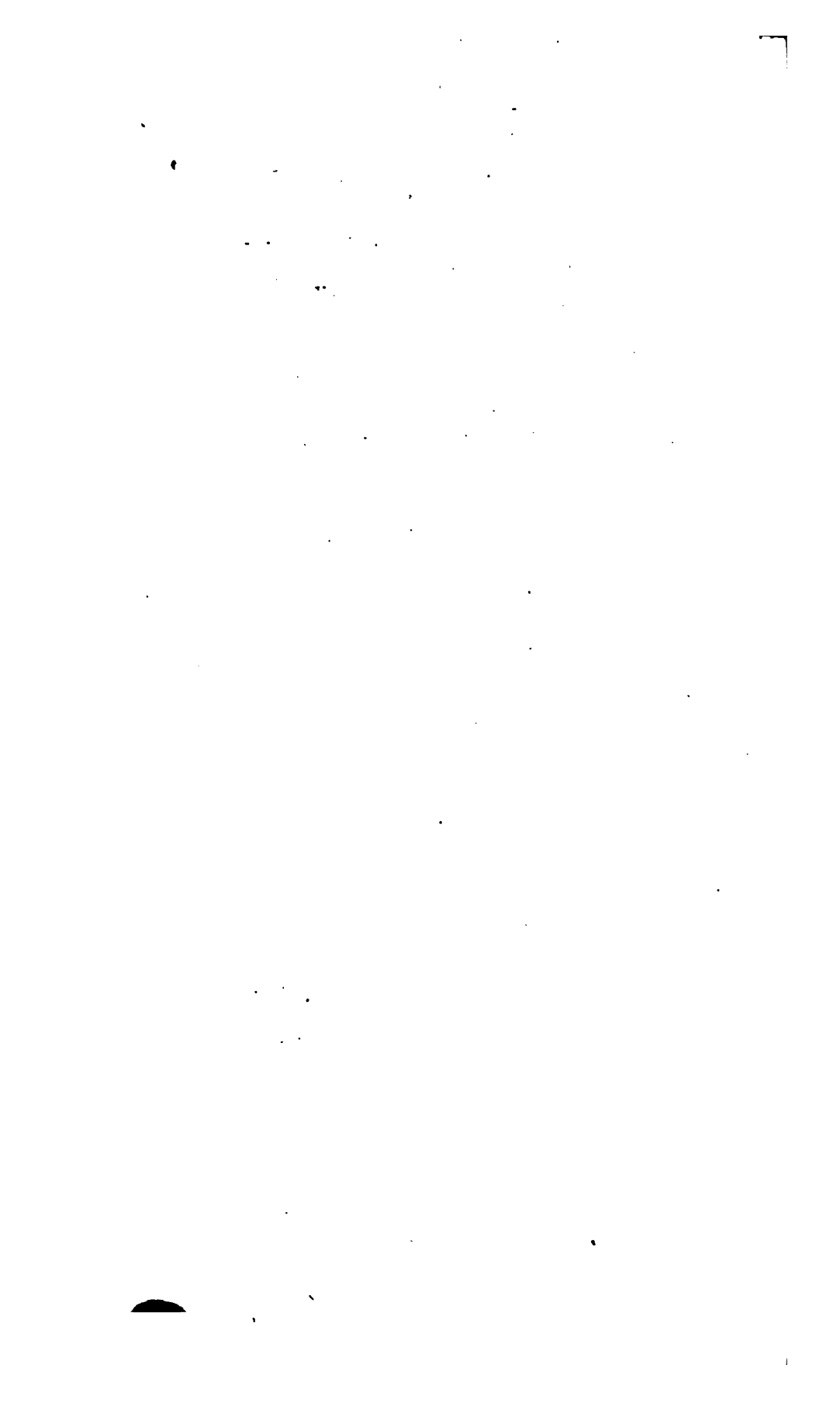
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91. times. 2d Count more general.

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97. cumstances of the above reference; with opinion on the last Count, and stamping the agreement and award.

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1. For not Taking, Repairing, &c. and against the Assignees of Tenant.

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10. 2d, For not repairing or yielding premises in repair,
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11. 3d, Not spending dung, &c. upon premises, but using it elsewhere.
12. 4th, For not spending hay upon the premises, but selling it.
12. 5th, For cutting down pollards under a particular growth.
13. 6th, Lopping hedges without placing the quicks in an husbandlike manner.
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21. premises ; like breach. 3d Count, stating plaintiff to be possessed of a longer term than demised to defendants ; and being so possessed, &c.
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26. 3d Count more general, for not using farm in an husbandlike manner, but, contrary to the rules of good husbandry, sowing fifty acres with oats, when the same ought to have been sown with barley.
27. Declaration against tenant at will, for ploughing more than one hundred acres of certain lands in each year, and for not throwing arable into four fields as near as might be, and not keeping each field in a succession of fallow, corn, clover, and wheat. 2d Count, for not spreading and spending the manure on the fallow, but carrying off hay which had arisen on the premises; not ploughing fallow three successive times, and laying manure thereon, but only ploughing once and not manuring; and keeping land in tillage, without manuring same.
29. 3d Count, for using premises in an unhusbandlike manner; sowing land without couching, cleaning, &c.; ploughing other land which ought not to have been broken up, and breaking up fallow ground; sowing same with corn and grain, without ploughing three times; not using compost, but carrying off, &c.
30. 4th Count, Tilling land without dressing; ploughing and breaking one hundred acres of ley ground out of the due course of husbandry, which ought not to have been ploughed in those years; sowing fallow ground with corn, &c. without ploughing three times; not using hay, but carrying it off and disposing of it elsewhere.
31. Declaration in B. R. by the landlord against tenant, for not using the estate in a good husbandlike manner, and not yielding it up in a good husbandlike condition at the end of the term; with several special breaches of the implied promise to use the estate according to good husbandry. (In the margin the breaches, eight in number, are by some accident misplaced. Breach 1st, page 32, a few lines from the bottom, beginning,
33. "Yet the said John." Breach 2d, p. 33, near the middle of the page, beginning, "And the said William further says." Breach 3d, fourteen lines lower, beginning also, "And the said William further says."
34. Breach 4th, p. 34, two lines from the top, "And the said William, &c." Breach 5th, ten lines lower, "And the said William, &c." Breach 6th, ten lines lower, in the middle, "And the said William." Breach 7th, fourteen lines lower, nearer the bottom, "And the said William." Breach 8th, p. 35, a few lines from the top. The student will strike out the breaches as they now stand in the margin, and add them as above.)

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36. Declaration by original in *assumpsit*, for letting a farm, and one hundred and one sheep thereon, for seven years, at several rents for each ; defendant held for three years, and then quitted, but did not return all the sheep.
40. 2d Count, upon a demise for three years. 3d Count, upon a demise for one year, and so from year to year at the will of the parties.
40. Declaration in B. R. landlord against his tenant at will, for not keeping buildings in tenantable repair, and cultivating and managing according to the course of husbandry in the parish and neighbourhood. Breaches : For ploughing and sowing land, part with linseed, part with oats : for sowing tillage land with corn, without
41. making fallow : for not laying manure bred on the same, but causing it to be spread elsewhere.
44. Declaration in the county court, for not paying the sum of seven shillings and sixpence yearly rent, for a pipe placed by plaintiff, for the use of defendant and his tenants, in a well belonging to plaintiff.
45. Declaration in C. B. at the suit of an attorney in that court, by attachment of privilege, on a special *assumpsit* to take a house of plaintiff under a lease containing certain covenants, to commence at a future day ; that plaintiff, confiding in a performance of the agreement on the part of the defendant, suffered him to enter into the house, which he greatly damaged, and pulled down a shed, &c. ; and on the lease being tendered to him by the plaintiff, refused to accept the same, and discharged plaintiff from a further performance of the said agreement ; and afterwards quitted possession without repairing the damage done to the house.
50. Declaration in B. R. landlord against his tenant, who had dug iron ore out of the lands without plaintiff's leave ; in consideration plaintiff would not sue defendant for same, he promised to pay the value of the ore. (See *Assumpsit*, Forbearance, *post*.)
54. Counts against defendant upon an implied *assumpsit* to spend the produce of the land upon the premises, according to the terms of a lease for which an agreement had been signed by the parties, but the lease itself never executed. 1st Count, carrying off compost, &c. and
55. expending it elsewhere. A general Count for using the premises in an unhusbandlike manner.
57. Declaration in B. R. on an agreement to pay one shilling and threepence in the pound rent for every pound that plaintiffs should lay out in the expences of an act of parliament for inclosing and allotting of lands, and

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for walling premises, and for draining two allotments of land.

39. Count on an agreement; plaintiff having recovered possession of a messuage in which defendant lived by ejectment, in consideration that plaintiff would permit defendant to continue in it for a certain time, he promised to keep the same open as a victualling-house, and to deliver possession at a certain time, or forfeit fifty pounds. (*See Forbearance, post.*)
429. Declaration in B. R. in consideration that plaintiff would *forbear* to distrain the goods of J. S. his tenant, for rent arrear, defendant, who had cattle on the premises which he was about to sell, undertook to pay him the rent then due, and what would become due at Midsummer. 1d Count, stating J. S. to be tenant for a year and a half at thirty-two pounds ten shillings, and that forty-eight pounds fifteen shillings was due for a year and a half.
431. 3d, That plaintiff intended to distrain by his two bailiffs, naming them (*See Forbearance, and Default of Third Person, post.*)
425. Declaration in B. R. against the assignees of a tenant for the benefit of creditors to pay the landlord his rent of a farm, in consideration of his *forbearing to distrain* goods on the premises, where part of the rent had been paid. 2d Count, for the year's rent, not stating part paid. (*See Forbearance, post.*)
104. Declaration against tenant, against whom an action of ejectment was pending, on his promise, if plaintiff would discontinue, to deliver possession, to repair, and pay plaintiff costs; defendant delivered possession, but refused to fulfil the remainder of his agreement. (*See Forbearance, post.*)

Declaration on promises for rent, by virtue of a verbal demise for not repairing premises, and for *mowing and cutting the grass* of a certain close, part of the premises (which defendant agreed not to cut down), contrary to agreement,

Morg. Pr. 70

Declaration by plaintiff, who was assignee of lessee, and the original lease granted to lessee contained certain covenants to *manure and plow, &c.* in the two last years of the term; in consideration plaintiff would, by verbal demise, let the same to defendant, he promised to perform the *forefald* covenants, or pay ten pounds,

Ibid. 77

Declaration for not *cutting hedges*, nor *delivering up crooks and eyes, &c. of gate, &c.* when defendant delivered up possession of the premises which he held of plaintiff,

Ibid. 80

Declaration on a verbal lease, for *cutting hedges and fences at an improper time*; for *not using the briars, &c. on the premises*, but spending them elsewhere; and for *leaving premises out of repair*,

Ibid. 82

Declaration; in consideration plaintiff would take a house of the yearly rent of twenty pounds, defendant promised to pay

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<i>the moiety of the rent and taxes, &c. to plaintiff, and to be jointenant with plaintiff, or pay a moiety of the rent, &c. for which this action was brought,</i>	Mor. Pr. 87
Declaration for not holding a warehouse, according to agreement, for three years, but leaving at the end of the second year,	<i>Ibid.</i> 90
Declaration for <i>not yielding up possession</i> of premises to plaintiff, which defendant had rented of a third person, and afterwards had let the same to plaintiff,	<i>Ibid.</i> 96
Declaration against defendant, who rented a house of plaintiff; on settling the account, he alledged he had paid the rent and taxes (which were in fact not paid), but said, for want of his keys he could not procure the receipts, and prevailed upon plaintiff (on defendant's promise to pay any deficiency) to give him a receipt in full,	<i>Ibid.</i> 99
Declaration; defendant held lands, &c. of plaintiff, and owed him three years rent, but pretended plaintiff owed him a large sum of money for work and labour, &c.; and it was agreed, that the lease should be cancelled; that defendant should yield up the premises, and account with plaintiff, and pay him the rent, plaintiff allowing him what he owed; lease was cancelled, but defendant refused to account or pay,	<i>Ibid.</i> 103
Declaration, where defendant took a house of plaintiff for one year, and promised him twenty pounds for the same, he afterwards refused to take possession, or pay the rent,	<i>Ibid.</i> 106
Declaration; in consideration plaintiff would ASSIGN certain closes which he held of defendants, A. B. and C. D. under a demise thereof by them made to him, which closes he had lately manured, and sown grain, &c. unto defendant, to hold the same to him for a certain time, and would permit him to take the benefit of the fallowing, &c. he promised to pay plaintiff twenty pounds for the fallowing, &c. and grain, &c. that was sown, and to pay the rent under which the plaintiff held the closes to A. B. and C. D.; defendant paid the rent, but refused to pay the twenty pounds (<i>See ASSIGNMENT, post.</i>),	<i>Ibid.</i> 111
Declaration for <i>not repairing premises, and not delivering possession</i> thereof to plaintiff, who had taken and paid earnest for the same,	<i>Ibid.</i> 113
Declaration on a special agreement: <i>for not filling up holes made in a close</i> plaintiff demised to defendant, by getting slates and stones, and <i>for not delivering up</i> the premises at the end of the term <i>in a condition fit for ploughing,</i>	<i>Ibid.</i> 120
Declaration for non-payment of money for stalls, racks, &c. of a stable, &c. which plaintiff let to defendant, being appraised according to agreement, at a sum which defendant was to pay,	<i>Ibid.</i> 144
<i>Indebitatus assumpsit</i> for the use and occupation of a house; quantum meruit thereon,	1. R. P. C. B. 127
In consideration that plaintiff demised to defendant a close of land, rendering half the grain for three years, defendant promised that he would annually sow the close, and render half the grain; defendant first year left two acres unsown, <i>Horne, 94.</i> Defendant	

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Defendant not delivering possession at the end of the term according to agreement,
Clift. 40. Read's Dec. 5.

For not repairing a messuage, *Rob. Ent. 10.*

In consideration that plaintiff, being impropiator of a rectory, would demise to defendant the messuages and lands discharged from payment of tithes, defendant undertook to repair the houses during the term, and at the end of the term to have them in good repair, *W. Entr. 72. 93.*

In consideration that plaintiff would permit to hold lands for three years, defendant undertook to pay six shillings and eightpence yearly, besides the annual rent,
1. Brown's Ent. 81.

Cafe for rent; in consideration that plaintiff would permit defendant to occupy, defendant promised to pay; *quantum meruit*, 3. *Lev. Rep. 146. Read's Dec. 9. Clift. 42. 46.* for the occupation of a stall in market ground.

Upon an agreement, for non-performance in not delivering possession of the messuages and of certain lands to plaintiff, *Read's Dec. 7.*

For non-performance of an agreement to build a house, *2. Sann'd. Rep. 347. 2. Inst. Cl. 106. 108. 111.*

For not ploughing lands according to agreement.

By administrator *durante minore etate*, against administrator *cum testamento annexo*, for ploughing and culture of land, *Clift. 51.*

2. For DOUBLE RENT (*See Actions of Assumpsit and Debt on Statutes*).

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61. Count on statute 11. Geo. 2. c. 19. s. 18. against a tenant of houses and lands, where different parts of the premises were demised to hold from and to different periods, for double rent, for holding over after notice by him given to quit; part of premises held from the fifth, &c. and other part from the twenty-fifth, at a yearly rent, payable half-yearly; and although defendant quitted part, yet did not quit other part.

63. Declaration in B. R. for double rent against tenant, for holding over after notice by defendant given to quit; with opinion where defendant quits in the half-quarter, and entitling the declaration where there is a doubt when the double rent became due.

64. Declaration for double rent, for not delivering up pre-

65. mises pursuant to his notice; with opinion as to the mode of declaring on the statute. (*See 4. Geo. 2. c. 28. 3. Burr. 1603.*)

65. Declaration in another form against tenant, for double rent.

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43. Declaration in B. R. on an agreement for not permitting plaintiff, his tenant, to enter upon land (held under a

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demise from defendant, determinable at the end of every year), to carry off summer worked wheat by him sown during his term, according to the agreement, in the harvest-time.

49. Declaration in C. B. ; in consideration that plaintiff, who was tenant to defendant, would quit and deliver up possession of the premises a fortnight before quarter-day, he promised to give him two guineas, and a discharge for rent up to quarter-day.

52. Declaration *in the great session for Montgomeryshire*, by off-going against coming-on tenant, on an agreement ; plaintiff being about to quit at Old May Day, defendant should pay twenty-five pounds, deducting ten pounds for privilege of ploughing lands, &c. ; plaintiff to leave muck, &c. and consume all the hay, &c. in the mean time ; defendant to take sheep at ten shillings *per head*, and defendant and servants to have a bed and fire to dress meat, &c. till Old Lady Day should arrive ; defendant refused to accept the sheep, or pay the twenty-five pounds.

56. Declaration in B. R. for not paying for trees which plaintiff had agreed to leave in defendant's garden at the end of plaintiff's lease, the reversion of the lease being in defendant.

Declaration against *executors*, for the testator's (defendant's landlord) not repairing premises according to agreement, Declaration, where plaintiff took to farm a messuage and lands of defendant for ten years, but determinable at the end of either of those years, if plaintiff thought proper, with liberty to reap two-thirds of the wheat he should leave on the premises when he had determined the agreement, &c. ; plaintiff at the end of the seventh year yielded up the premises, and left divers acres of wheat, but defendant *refused to let him reap* two-thirds of it, contrary to the agreement, but reaped and converted it to his own use,

Morg. Pr. 24

Declaration on an agreement, by a tenant against *executrix* of a landlord, for money he promised *to pay for hay some tenants of a close were mowing* when plaintiff took the estate,

Ibid. 107

Declaration ; in consideration plaintiff would take the lease of a house belonging to defendant, he promised *to repair*, but did not,

Ibid. 116

Declaration in special *assumpsit*, for depriving plaintiff of certain *privileges* which he was entitled to by agreement with defendant, as *annexed to a messuage* demised by defendant to plaintiff,

Pl. Ass. 131

Ibid. 259

In consideration that plaintiff would accept a demise of a house out of repair under a rent, defendant undertook to repair the house within eight months, *Robinson's Ent.* 10.

In consideration of money paid, and yearly rent to be paid by plaintiff, defendant promised to demise lands for four years, if A. should so long live, *Vidian*, 96, *Robinson's Ent.* 109.

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In consideration of forty pounds in hand paid to defendant by plaintiff, defendant promised to demise a manor and lands to plaintiff for term of ten years, at an annual rent, *Pl. Gen.* 16.

In consideration that plaintiff had taken to farm messuages and lands for years, at a certain rent, defendant undertook that plaintiff should not be molested; plaintiff entered and sowed the lands, and was expelled by one N. and F. before the end of the term, and before the corn was ripe, *Br. R.* 111.

In consideration that plaintiff (at the instance of defendant, claiming title to lands in plaintiff's possession, which plaintiff had cultivated and sown) would deliver to him quiet possession of lands, he promised to pay all the charges that plaintiff should be at in and about the culture of the lands, without specifying any time for the payment, *Hanf.* 51. *Assumpsit* for rent certain, *Clift.* 43.

Defendant, on demise of tenements, promised that plaintiff should not be expelled within the term, *Cl. Man.* 78.

Defendant demised a close of pasture for a year; and in consideration of thirty pounds then paid, and a gelding of the price of pounds to be delivered to him by plaintiff, defendant undertook that plaintiff should enjoy the close without any molestation; but defendant's father expelled plaintiff, *Br. R.* 16.

Against defendant, for not letting a stone wall belonging to a mill demised to plaintiff, according to his agreement, *Clift.* 47.

The plaintiff being possessed of lands, on the demise of defendant, for three years to come, defendant, in consideration of twelve pence to be paid him by plaintiff, undertook to pay plaintiff ten pounds on request, if he would not remove plaintiff from the possession by suit in law, and would not make the demise void before the end of the term, *Brownl. Red.* 117.

Defendant demised a house to plaintiff, on an agreement to pay defendant fifteen pounds at two several feasts, and that plaintiff should become bound to defendant for the payment of it; and defendant in consideration thereof, and of twelve pounds, promised to become bound to plaintiff for quiet enjoyment; defendant did not permit plaintiff to enjoy, nor did he execute the bond, 2. *Brownl.* 53.

On Contracts relating to the SALE, ASSIGNMENT, DEMISE, &c.
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particular Persons for Use and Occupation.) (18)

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137. Special Count for the use of a way to pay so much, &c, and to make amends for damages, General *indebitatus assumpsit* for the use of a way; and Count on the *quantum meruit*.

214. *Assumpsit* in B. R. by A. and B. administrators *cum testamento annexo* of administrator, against defendant, for the use and hire of a wharf and divers warehouses.

45. Declaration in C. B. at the suit of an attorney in that court, by attachment of privilege, on a special *assumpsit* to take a house of plaintiff under a lease containing certain covenants, to commence at a future day; plaintiff, confiding in the performance of the agreement on the part of the defendant, suffered him to enter into the house, which he greatly damaged, and pulled down a shed, &c.; and on the lease being ten-

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- dered to him by the plaintiff, *refused to accept the same*, and discharged plaintiff from a further performance of the said agreement ; and afterwards quitted possession, without *repairing* damage so done to the house.
66. Declaration by plaintiff, who was possessed of a public inn, against defendant, who had agreed to take the inn of plaintiff for the remainder of plaintiff's term, and to take the stock in trade at a fair valuation ; plaintiff and defendant nominated three persons each to appraise, one on each side for stock, others for horses, &c ; defendant refused to fulfil his agreement.

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69. Declaration against defendant, who had HIRED a ready-furnished house of plaintiff for three months, at two guineas *per week*, for only staying in the house one month, and refusing to pay rent.
70. Declaration in C. B. ; in consideration that plaintiff would discharge defendant from an agreement entered into between them for the taking a public-house, defendant undertook to pay a sum of money ; breach, non-payment.
71. Declaration in *assumpsit* in nature of *deceit*, where the defendant *had no right* to ASSIGN over a lease of a public-house, for the remainder of a term, which he had agreed to sell plaintiff.
73. Declaration in B. R. by *husband and wife*, on an agreement to SELL to defendant, as *jurveyor of the highways*, a piece of ground to be laid into the highway, for not paying plaintiff forty years purchase, according to agreement.
74. On a special agreement to DEMISE a slaughter-house to plaintiff for a year ; breach, for expelling him within the year. 2d Count, on consideration executory.
77. *Assumpsit* in B. R. on an agreement *to quit and deliver up possession to plaintiff* of certain premises (which one A. B. had demised to plaintiff, and then in the occupation of defendant), if plaintiff would *buy certain goods* upon the premises.
83. Declaration in B. R. on a special agreement to let or ASSIGN his interest, &c. in a public-house on a certain day, or forfeit nine guineas, five of which plaintiff deposited in the hands of a third person, to bind the agreement.
84. Declaration in C. B. on a special agreement *to take a house*, and purchase his goods, fixtures, &c. at an appraisement by two brokers, under a penalty. 2d Count, more general.
86. Declaration by the *administrator durante minoritate* of an infant, on a special agreement that plaintiff should CONVEY to defendant a leasehold estate, by a proper deed

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- of assignment, and that plaintiff should pay defendant the purchase-money on a day certain, against defendant for not paying. 2d Count, stating it to be a lease for three lives.
88. Declaration in B. R. for breach of an agreement in NOT ACCEPTING possession of an inn, paying for the good-will, and taking the fixtures and stock at a valuation. 2d Count, for the inn and good-will, not mentioning the stock.
91. *Præcipe for a declaration by original*, on an unsealed agreement made with one of two trustees in trust to sell freehold premises under a demise, to purchase the same at so much an acre; defendant REFUSED TO ACCEPT; action brought in the name of both; with cases and opinion on the effect of the agreement made by one of two trustees.
93. Declaration in C. B. against defendant, for NOT DELIVERING up to the plaintiff POSSESSION of an alehouse, which he had agreed to do, and also *pretending to have the lease of the house (when in fact he had not)*, which he would ASSIGN over to plaintiff, whereby he obtained of plaintiff a sum of money, in part of a much greater sum which plaintiff was to give defendant on his obtaining possession of the premises. 2d Count, for not delivering up possession only; breach to the third; special damages from the non-performance. 4th, on the DECEIT; with a special damage. (*See Deceit, post.*)
95. Declaration in B. R. for a stated penalty, and damages on a very special agreement to LET premises and to sell stock, &c. at a valuation. 2d Count, for damages, omitting the penalty: POSTEA for the plaintiff on the whole declaration generally (*See Postea, post.*); with cases and opinion on the suing out *latitat* or *original before the cause of action accrued*.
96. Defendant, in consideration that plaintiff had sold to him an estate, promised to pay the purchase-money on a day certain next ensuing, if the title was then satisfactory. 2d Count, to pay, &c. whenever a satisfactory title should be made. 3d, for lands sold and conveyed.
103. Declaration on an agreement to let a house to plaintiff, and that goods, &c. should be taken at a fair appraisement, and on the refusal of either to pay nine pounds nine shillings; defendant refused to permit plaintiff to enter, &c. and to pay, &c.
106. Declaration on a special agreement, at the suit of the purchaser of an estate by auction against the late owner of such estate, for not delivering the actual possession.
472. Declaration in B. R.; in consideration of plaintiff's ASSIGNING to defendant the remainder of his term in certain premises, and of permitting defendant to receive certain arrears of rent due to plaintiff from his under-

tenant,

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- tenant, defendant promised to pay to plaintiff's lessor the rent due, and *indemnify* him from any action on that account; against defendant, for not paying the rent, *per quod* an action of covenant was brought against plaintiff by lessor. (*See Contracts to Indemnify in Assumpsit, post.*)
15. Declaration against defendant, for not fulfilling an agreement whereby plaintiff was to give up his trade of a pawnbroker; defendant was to have the house, shop, &c. on paying for the stock in trade.
- Declaration on an agreement to accept an ASSIGNMENT of premises in possession of plaintiff; and it was agreed further, if either refused to perform the agreement to forfeit two hundred pounds; defendant *refused* to ACCEPT the assignment or pay the forfeiture,
- Declaration for not RE-CONVEYING premises to plaintiff after a certain day,
- Declaration for non-payment of money for stalls and racks of a stable, &c. which plaintiff *let* to the defendant, the same having been appraised at twenty pounds, which defendant was to pay to plaintiff,
- Declaration for non-payment of a sum of money for the goodwill of a public house which plaintiff had *let* to defendant,
- Declaration for purchase-money of houses, &c.
- Declaration; in consideration plaintiff would *take a lease* of a house belonging to defendant, he promised to put the same in repair, but did not,
- Declaration on a special contract, where plaintiff *BOUGHT* one acre of turnips of defendant; the bargain was made about a month before Michaelmas Term, and defendant was to have the close till the second of February, to take them at the price of them in this manner, *viz.* to pay defendant five shillings when he began to draw them, and five shillings *per week* more for three weeks following, one shilling being given in earnest at the time of making the bargain; but defendant refused to let him have them, and keeps the one shilling, and says they were sold before,
- Declaration; in consideration plaintiff would DEMISE a messuage to a third person, defendant promised to see the rent paid; and though the person paid part, defendant refused to pay the remainder. (*See Third Person, post.*)
- Declaration in special *assumpsit* to pay plaintiff forty pounds, in consideration of his having, at defendant's request, paid him twenty pounds for the PURCHASE of a house belonging to and in the possession of defendant's father, and for his use, to put an end to a law-suit, if defendant or his father should disturb plaintiff in the possession of it, which defendant did,
- Counts in *assumpsit*; *quantum meruit* for permitting defendant to have the use of plaintiff's pond to water his horses for six months, and to wash them there,
- Mor. Pr. 92
- Ibid.* 210
- Ibid.* 144
- Ibid.* 148
- Ibid.* 198
- Pl. Aff. 131
- Ibid.* 61
- Ibid.* 130
- Ibid.* 247
2. Ld. Raym. 1310
Declaration

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Declaration on mutual promises upon an agreement, by which the plaintiff agrees to release to the defendant his equity of redemption in two closes; in consideration of which defendant undertook to pay to the plaintiff seven pounds, 1. *Mod. Ent.* 111. *Lut.* 245. Plea in bar, that by the same release whereby plaintiff released the equity of redemption, he released all actions, &c. *Id.*

Plaintiff was tenant of a copyhold with two others for life successively, where the custom of the manor was, that the first person named in the copy should **SURRENDER** to his own use and two others to be named by him; in consideration that plaintiff, for twelvepence in hand paid, and fifty quarters of salt to be delivered, promised to surrender copyhold lands to his own use, and two others to be named by defendant, and would procure a court, defendant promised to appear and **ACCEPT** the estate, and deliver salt at a time appointed; plaintiff got a court, and defendant did not appear, *Wi. Entr.* 65.

In consideration that plaintiff would **SURRENDER** the copyhold to use of defendant and his heirs, defendant promised to pay plaintiff twenty pounds within a month after the surrender, 1. *Brown's Ent.* 54.

In consideration that plaintiff would **SURRENDER** copyhold land to the use of defendant, on condition, defendant promised to pay plaintiff ten pounds within three weeks after the surrender, 2. *Brown's Ent.* 4.

In consideration that plaintiff would procure his son J. to make a **CONVEYANCE** of certain copyhold lands, and would discharge defendant from a certain agreement made between them, defendant promised to pay one hundred shillings, 2. *Brown's Ent.* 3, 4.

Defendant sold copyhold lands to plaintiff, and promised to make a perfect surrender within a certain time, *Pl. Gen.* 16.

Defendant sold lands to plaintiff for money agreed upon between them, and promised to make him a good title to it, *Cl. Aff.* 264.

Plaintiff bought lands of defendant, and defendant promised to make a complete title within a limited time, 1. *Brown's Ent.* 29.

Plaintiff sold lands to defendant for two hundred pounds; and in consideration that plaintiff promised to make him a conveyance thereof as to be devised by defendant, defendant promised to pay plaintiff one hundred pounds on the execution of the deeds, and another one hundred pounds on a day certain, and give him a horse and ten pounds in part payment, *Brownl. Red.* 24.

In consideration of money paid and to be paid yearly, on **CONVEYING**, plaintiff undertook to make a good and legal conveyance of lands in fee, *Robin's Ent.* 72.

In consideration that plaintiff had *demised* to defendant part of his house, &c. defendant promised to give plaintiff a quarter's notice to quit, or give him five pounds on request, *Cl. Man.* 126. Defendant *demised* manor that he ought not to *demise*, *Cl. Aff.* 299.

Defendant agreed to *sell* plaintiff a messuage, and promised to keep plaintiff harmless in the prostrating and pulling down house, for which B. brought an action, *Clift.* 44.

On an agreement between plaintiff and defendant concerning a *demise*; and several agreements made, which defendant did not perform, *Tbomp.* 23. 2. *Brown's Ent.* 2.

On an agreement that defendant should not *assign*, and would spend dung upon the premises, &c. *Clift.* 43. 47.

On an agreement to *surrender* to defendant his shop, defendant undertook to put plaintiff in quiet possession of another shop of defendant, or pay plaintiff twenty pounds, 1. *Brown's Ent.* 25.

In consideration plaintiff would *assign* a messuage and estate, and interest therein, defendant promised to pay four hundred and fifty pounds, *Clift.* 46.

Defendant,

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- Defendant, seised of copyhold lands for life, *sold* to plaintiff his estate therein, and goods and cattle, and promised to cause a tide to be made in the lands, and deliver the goods, *Raft. Ent.* 7.
- By executor, where testator was possessed of tenements for a term of years, and of goods in a house, and messuages; in consideration that testator promised to *convey* an estate to defendant, and relinquish to him several lands at several times, and repair the houses, promised to pay testator five hundred pounds, *Herve*, 66.
- On an agreement to *demise* to plaintiff for years, at a rent certain; and in consideration thereof, and that plaintiff would accept a demise and pay the rent, defendant paid plaintiff sixpence, and promised to demise at a certain day, or pay him, &c. *Hanf.* 55.
- Defendant *sold* a term in lands of plaintiff for money in hand paid and to be paid, and in consideration thereof promised to *warrant* the premises, containing three hundred acres, to be of the annual value of four shillings an acre, when premises were not of so much value, *Robinson's Entries*, 33.
- Plaintiff bought lands of defendant, and defendant promised to buy of plaintiff within a certain time, which he did not do, but within the said time sold them to A. and enfeoffed A. in the lands, *Raft. Ent.* . *Vet. Intr.* 48.
- On an agreement to pay eight pounds for building a house, but does not aver that he had built, or that he was prevented by defendant; and for this reason bad, *2. Sand.* 346.
- Declaration on an agreement concerning the purchase of a house, &c. by the plaintiff of the defendant. 2d Count, in consideration that the plaintiff had conveyed to defendant such house for one hundred and thirty-five pounds, promised, without saying who promised; and good, *1. Lut.* 233.
- By administrator *durante minore etate* of executor, for not performing promise made by defendant to plaintiff, on the sale of his *interest* in a term to defendant, *Cl. Man.* 115. *Bro. Va. Me.* 35.
- In consideration that plaintiff, lord of the manor, would admit B. tenant of the copyhold, defendant undertook to pay twenty-five pounds for the fine on admission, on a day certain, *Robinson's Ent.* 29.

On Contracts relating to the SALE, DELIVERY, EXCHANGE, and CARRIAGE of GOODS, CATTLE, &c. and Goods LENT and LET to HIRE (*inter alia* of Bailments) (See Negligence), and Deceit in the Sale, &c. (See Deceit), and on Warranty, (19)

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196. *Assumpsit* in C. B. for a parcel of tea, with an allowance of discount upon prompt payment. 1st Count, for tea sold. 2d, for the discount. 3d, account stated.

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179. Declaration in B. R. *against an attorney*, for taking so little care of a horse he HIRE^d to ride, that the horse was strangled in a stable into which defendant put him. 2d Count, on a hiring *for a day*, detaining him

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180. longer, and taking such little care of him that he was strangled. 3d Count, for not redelivering to plaintiff a saddle and bridle which plaintiff lent him to go a journey.
181. Declaration in B. R. on an agreement between the plaintiff, a purser of one Indiaman, and defendant, the commander of another, at Batavia, bound to Canton; in consideration that plaintiff would at Batavia, buy as much tin as should come to ten thousand star pagodas, and would ship the same on board defendant's ship, and would pay defendant at Canton five thousand star pagodas, defendant promised to lend plaintiff ten thousand star pagodas to buy the tin, and to carry the tin to Canton, and there would DELIVER to plaintiff half thereof to his sole use, against defendant (after shewing performance on plaintiff's behalf), for refusing to deliver the tin to him at Canton.
107. *Præcipe by original*, or declaration on a promise, in consideration that plaintiff would give time to pay the remainder of a sum of money (part being paid to bind the bargain) for a quantity of hay SOLD by plaintiff, remainder to be paid at Michaelmas next, and then to take away the hay; but if he should suffer the hay to remain on the land after the day promised, to pay rent for that land; defendant neither paid the remainder, or cleared away the hay at the time, or paid the rent for the land. (*See Forbearance, post.*)
109. Declaration in B. R. by surviving executor, for not paying the purchase-money for testator's share and interest in a patent for making fictile pipes, which plaintiffs had SOLD to defendant.
110. Declaration in B. R. by *administratrix*, for not paying for the thirty-second share of a ship, payable by instalments, SOLD to defendant.
113. Declaration for the value of skins DELIVERED to defendant to dress into leather, which, together with plaintiff's factory, were destroyed by fire, on an implied contract of indemnity. 2d Count, negligence. 3d Count, on the bailment. 4th Count, to REDELIVER 5th Count, on the *assumpsit* to account. 6th Count, on a *quantum valebant*; with Mr. Bearcroft's opinion, that this action will not lie against the bailees. Mr. Mansfield, however, was decidedly of opinion that it would.
114. Declaration in C. B.; in consideration plaintiff would sell an undivided moiety of liquors, defendant agreed to take them, and pay by acceptances at two and three months. 2d Count, for goods bargained and sold.
115. Declaration in B. R. by the holder of shares of admission to Covent Garden and Drury-lane theatres, against the
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- proprietors, for breach of an agreement to repurchase them on particular terms; and allow interest from a certain day, where two of the proprietors became so after making the agreement. 3d Count, by the holder of Drury-lane admissions only.
118. Declaration in B. R. for the price of a share in a gelding bargained and sold. 1st Count, in consideration (plaintiff would sell third part of interest in the gelding) executory. 2d, in consideration (plaintiff had sold third) executed. 3d Count, in consideration of an agreement to send the gelding to one J. C. to be matched to run; and if J. C. would take a fourth, defendant would; if not, defendant would take a third at a certain price. 4th, for the third of a gelding bargained and sold.
120. Declaration *by original*, for not paying for a watch which plaintiff sold to defendant, and to be paid for on marriage or death, which should first happen. Averment of the marriage.
121. Declaration in C. B. *assumpsit* to pay for goods taken, on condition of *BUYING* if not returned within a limited time.
121. Declaration in B. R. on an agreement for *EXCHANGE* of cattle; defendant was to give his gelding and a sum of money in exchange for plaintiff's gelding; for non-payment of the money.
122. Declaration *by original*; in consideration that plaintiff, who had sold goods to a third person, would allow five per cent. defendant would pay for them; breach, that though plaintiff was ready to allow, defendant would not pay.
123. Declaration in B. R. for the price of a stack of hay sold eighteenth of October, on consideration to be paid for on first January following, and suffered to remain in plaintiff's hands till first May following: The action was brought before the first May; the hay was sold by auction; defendant took away part by force, and becoming insolvent, wanted to take away the residue without paying for it, which plaintiff resisted.
126. Declaration for *deceit in the sale* of an unsound horse warranted at a sound price. 1st Count, executory. 2d, executed. (*See* the note on declaring on the warranty.)
127. Declaration on the *SALE* of rotten sheep, on a warranty.
127. Declaration on the *SALE* of a gelding, warranted to be sound, that had the glanders.
131. Declaration for fifteen calves sold, to be delivered two each succeeding week, and three the last, and to be paid for on delivery; defendant delivered part, but refused to *DELIVER* the remainder.
138. Declaration in B. R. on an agreement to *DELIVER* cows.

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146. Declaration by a soap-boiler against defendant, for not sending a box of soap delivered to him from L. to N. and not DELIVERING same to A. B. *per quod*
147. A. B. refused to employ plaintiff any longer ; and a Count for not delivering the box within a reasonable time to some common carrier used to carry goods from L. to N. *per quod* the soap wasted ; and a reduction in the price taking place, the soap became of little or no value.
- 148, 149. Declaration in B. R. against defendant, for not DELIVERING to plaintiff certain lace ruffles won by plaintiff at a raffle.
151. Declaration in B. R. on special agreement, at the suit of the owner of a sloop, against the defendant, who had HIRED her, for not paying fourpence out of every shilling earned by the said sloop, according to the terms of the agreement.
155. Declaration for letting a horse to HIRE not capable of performing the journey.
161. Declaration in B. R. on a special agreement to buy a horse, on condition of returning him if not liked, on paying two guineas ; defendant tried, and returned him his horse for several days, but refused to pay, &c.
175. Declaration in B. R. that plaintiff had bought of defendant fifty-seven loads of hay ; he promised to *deliver* it in such proportions as plaintiff had occasion for ; against defendant, who had delivered part, for refusing to deliver the remainder. 2d Count, had bought. 3d Count, hay bargained and sold, to be delivered in such proportions. 4th Count, more general.
185. Declaration by original, for using a mare immoderately that had been let out to hire, and not returning her within a certain time agreed upon at the letting to hire of the said mare. (Misfeasance.)
187. Declaration in B. R. against two (one by his right name, against whom the writ was taken out, naming him Joseph instead of Thomas), for not SELLING and DELIVERING part of an expected importation of tallow, pursuant to the original contract, which was afterwards altered to a new contract as to the mode of payment.
191. Declaration in B. R. ; in consideration plaintiff would deliver to defendant a quantity of buckles, he promised to deliver to plaintiff in EXCHANGE ten pieces of Irish linen ; plaintiff delivered the buckles, but defendant did not deliver the linen to plaintiff.
197. Declaration against defendant for putting an HIRED horse to go from R. to M. into a cart, and driving him to W. and abusing the horse so much, that plaintiff lost the use of him for some time, and was put to great expence in curing him.

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200. Declaration on the EXCHANGE of one horse for another and money, defendant knowing his to be unsound, and plaintiff's horse and money being a valuable consideration for a sound horse.
202. Declaration for selling an unsound horse at a sound price.
211. Declaration in B. R. by *administratrix*; in consideration that plaintiff would PURCHASE an *annuity*, defendant undertook to *guarantee* such payment, on condition that testator would permit him to sue in his name. 2d
212. Count, in consideration of taking *security* from
213. defendants; plea, *non accrevit infra sex annos*; *replication*, &c.; *issue*.
213. *Præcipe for declaration by original*, by the owners, for the remainder of a sum of money bid by defendant for their ship, which was put up and sold at public auction at Lloyd's; one quarter part had been paid.
220. Declaration in a county court on an EXCHANGE; in consideration plaintiff would exchange certain cattle of plaintiff's for cattle of defendant's, together with a sum of money to boot, the defendant promised to deliver part of his cattle immediately, and the rest, together with the money, at a particular time; although part of the cattle was delivered, the residue and money was undelivered and unpaid.
228. Declaration in B. R. for not paying plaintiff for two hogs sold and delivered to defendant, half in hops and half in cash.
229. For not delivering barley bought by plaintiff of defendant.

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5. Declaration; plaintiff bought three horses of defendant, who promised, upon their not being liked upon reasonable trial, to take them back, and *repay* plaintiff the money he gave for them, deducting one guinea therefrom; plaintiff returned one horse, and defendant refused to repay.
8. Declaration; plaintiff was possessed of a boat, which he let out to hire to defendant to bring some mahogany ashore which was on board a ship; defendant told the plaintiff, that the said mahogany could be legally brought on shore; but defendant not having procured the certificate for its being landed, the mahogany and boat were seized, &c. (*See Deceit, Negligence.*)
- Declaration for non-payment of money which plaintiff paid for the purchase of some cattle which had been sold under distresses made upon some of defendant's tenants for the poor's rates; and which cattle, except one that died, were delivered up by plaintiff to the tenants, on defendant's promise to pay him the money he had given for them, allowing for that which died,

Mor. Pr. 9. 175
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or the price of oxen sold to defendant, and which was agreed to be paid at a certain day,

Mor. Pr. 173

a consideration plaintiff would sell a crop of corn to defendant, he promised to reap and carry it away at his own cost, and pay plaintiff three pounds an acre for it: breach, that he reaped it, but did not pay,

Ibid. 202

Declaration on *assumpsit* to pay for a gelding let to a third person, if he did not return it,

R. P. C. B. 471

Declaration on a special agreement, in consideration of a guinea paid by defendant to plaintiff, to buy or sell hops of a certain quality, at such a time and place of delivery as defendant should afterwards name; defendant afterwards chose to buy of plaintiff at a certain price, and to be delivered at a certain time and place: plaintiff delivered the hops accordingly, but defendant refused to accept them, or to pay the price. 2d Count, for hops sold, and delivered to defendant's use,

Lill. Ent. 16

Declaration on a special agreement to pay five shillings and sixpence a cord for one thousand five hundred cords of wood sold and delivered by the plaintiff to defendant,

Ibid. 22

Declaration on an agreement to deliver six bags of hops before twenty-fifth December: breach in not delivering: plea, submission to an award: demurrer,

1. Ld. Raym. 247

Declaration for non-payment of money agreed to be given in exchange with defendant's gelding for two geldings of plaintiffs,

Mor. Pr. 141

For not delivering sugars bought of defendant,

Ibid. 160

For not delivering all the rabbit-skins which defendant, who was a warrener, had from his warren the season next after his agreement with the plaintiff, who bought the same,

Ibid. 161

For not delivering to plaintiff all the hops which the defendant grew that year, although plaintiff was ready and offered to pay the agreed price,

Ibid. 163

For not delivering all the heifers plaintiff bought of defendant; they were to be delivered weekly, two at a time,

Ibid. 165

Declaration on sale of household furniture by defendant to plaintiff, and promise by defendant, in case the landlord should claim any as his property he would pay plaintiff the value,

Ibid. 194

Declaration in *assumpsit* to deliver goods according to agreement, earnest being given,

1. R. P. C. B. 470

Declaration in *assumpsit* on special agreement to buy the plaintiff's hops, as well bagged, dried, and picked, as those growing on the plaintiff's grounds; the hops that were dried and bagged, as well as those growing, to be picked by the plaintiff; and the whole to be weighed off by him at a certain place, and before a certain time, to the use of defendant; in consideration whereof defendant paid one shilling, and promised to pay at the rate of eight pounds *per cent.*: plaintiff performed his part of the agreement, but defendant refused to perform, &c.

Lill. Ent. 3
Decla-

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Declaration on special <i>assumpsit</i> to purchase a cart-load of hops at four pounds nineteen shillings <i>per cwt.</i> , and one shilling in hand paid, the growth of a particular year, person, and place : plaintiff performed, but defendant refuses, &c.	Lill. Ent. 18
<i>Assumpsit</i> for four trusses of hay and four bushels of oats, in return for so many <i>lent</i> to defendant,	Pl. Aff. 30
Declaration in <i>assumpsit</i> on an agreement for <i>purchasing</i> hops. 1st Count, on the agreement. 2d, that he had bought to deliver, &c.	Ibid. 233
Declaration on a parol agreement to <i>buy</i> brewing vessels and other things mentioned in an inventory, on the terms plaintiff had just purchased them,	Ibid. 253
Declaration in B. R. in special <i>assumpsit</i> , on a contract for a ship load of coals <i>sold</i> , but not delivered. 2d Count, laying the contract more generally. 3d Count, on a promise to deliver, in consideration that plaintiff would pay for them,	Ibid. 283
Special <i>assumpsit</i> in B. R. to pay plaintiff one thousand five hundred and fifty pounds at five <i>per cent.</i> for the making of the consideration, and assigning five hundred pounds third subscription of the South Sea Company ; defendants to allow and pay all future calls upon the said subscription : breach, that defendant <i>refused to accept</i> the transfer of the money,	Lill. Ent. 85
Declaration in <i>assumpsit</i> , by <i>assignees of a bankrupt</i> , to recover stock which had been illegally transferred by bankrupt to defendant. 2d Count, on a promise to <i>retransfer</i> ,	5. Burr. 1533
Count in <i>assumpsit</i> , for not completing purchase of some shares in a canal navigation,	6. T. R. 67
On an agreement to transfer London Assurance stock,	1. Mod. Ent. 119
On a promise to purchase all the hides and skins of the oxen, horses, &c. which defendant should kill from a day certain till, &c.	Ibid. 123
Declaration on a promise to pay plaintiff a sum of money for procuring stock to be transferred, and another sum for expenses, &c. thereon,	Ibid. 123, 124
<i>Assumpsit</i> for excessive working plaintiff's mare let to hire,	Ibid. 127
Declaration on an agreement to transfer South Sea stock,	Ibid. 155
Declaration on an agreement for part of a ship, and for the profits arising by the voyage of the said ship, being at sea,	Ibid. 186
In consideration that plaintiff would sell defendant six measures of <i>pisurum</i> , defendant undertook to pay as much as the best <i>pisa</i> in the next market of G. were sold, on request, 1. <i>Brown.</i> 28.	
In consideration that plaintiff would permit defendant to take so many <i>latres</i> and <i>regulas</i> as he pleased, he undertook to pay so much as they were sold for in the county, on request, 1. <i>Brown. Ent.</i> 28.	
In consideration that plaintiff would sell to defendant a gelding for such a price, part thereof to be paid, undertook to pay the residue at the next feast-day, <i>Ib.</i> 29.	
In consideration that plaintiff would sell to defendant twenty-two cart-loads of coals, at the rate of forty shillings for every cart-load, defendant undertook to pay on request ; and <i>indebitatus assumpsit</i> for the money, <i>Hanf.</i> 56.	

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- similar declaration for goods sold, to be paid for on request, 2. *Instr. Cl.* 123.
- In consideration that plaintiff would sell defendant coals at the market price at Billingsgate, defendant undertook to pay; averment of the price; *indebitatus assumpsit*, and *quantum valebant*, *Clift.* 908.
- In consideration that plaintiff would sell to defendant eight *serias* of Malaga wine, at a certain price, defendant undertook to pay on request, *Vidian*, 96. *Cl. Man.* 61.
- In consideration that plaintiff would sell to defendant two oxen, he undertook to pay ten pounds on request, whereof part was paid, 1. *Brown. Ent.* 40. *Brown's V. a. M.* 3.
- Against *baron and feme*; in consideration that plaintiff would sell to defendant the grass growing in the meadow for five pounds, defendant undertook to pay on request, *Thomp.* 12. *Clift.* 61. *Quantum meruit* for what he should expend for cutting thereof, &c.
- In consideration that plaintiff would sell eighteen bushels of barley, at the rate of two shillings and sixpence for every bushel, defendant undertook to pay on request, *Thomp.* 18.; and for barley bought and on board a ship; *indebitatus assumpsit* for the money, and *quantum meruit* for the work and labour, *Clift.* 909.
- Assumpsit* for money promised in exchange for goods of plaintiff with goods of defendant, and mutual promises made, which plaintiff on his part performed, *Vid.* 53. *Clift.* 71, 72.
- Assumpsit* for money promised in exchange of plaintiff's mare with defendant's horse, *Robinson's Ent.* 63.; and of one gelding for another and forty bushels of oats, *Clift.* 73.; and of a horse for forty bushels of coals, *Ib.* 90.
- In consideration that plaintiff would sell defendant cattle at different prices, defendant undertook to pay on request, whereof part was sold, *Brownl. Red.* 23. *Cl. Man.* 92. 2. *Instr. Cl.* 129, 122.
- In consideration that plaintiff would sell to defendant a mare, defendant undertook to pay when the wife of defendant brought forth a girl, *Clift.* 62.
- In consideration that plaintiff would sell to defendant ten sheep with lamb for four pounds, defendant undertook to pay at the day, *Mod. Intr.* 9. 2. *Instr. Cl.* 124.
- In consideration that plaintiff would sell to defendant ten yards of cloth, called frizes, &c. undertook to pay as much as they were worth, *Cl. Man.* 101. 2. *Instr. Cl.* 144.
- Assumpsit* to pay plaintiff for Spanish cloth, sold by him and delivered to one J. S. if he should fail to pay for it, *Cl. Man.* 112.
- Assumpsit* by writ original in the B. R. where defendant, in consideration that plaintiff would sell and deliver a mare for five pounds, promised to pay said sum to plaintiff, *Ib.* 122.
- On *emisset* of fire wood, to be paid for at a certain time, *Read's Dec.* 42.
- Assumpsit* for the purchase of stocks of rootwood, *Ib.* 66.
- Assumpsit* to pay plaintiff residue of money for lambs at a certain feast-day, &c. *Cl. Ass.* 230.
- Assumpsit* for a ship sold, and another had and received, *Brownl. Red.* 74.
- In consideration that plaintiff would sell defendant nine pounds of cheese at a certain price, defendant undertook to pay at a certain day, *Pl. Gen.* 21.
- In consideration that plaintiff bought a gelding for twenty-five pounds, defendant undertook, that if plaintiff, within three days, should disapprove the gelding, defendant would retake him, and *repay money* on request, *Thomp.* 20.
- By an executor, in consideration that testator would sell to defendant two cows, defendant undertook to pay as much as they were worth; and *assumpsit* for one *beisar* cow; and *indebitatus assumpsit* for cattle sold by testator, 1. *Brown's Ent.* 14.
- In consideration that plaintiff would sell defendant fifty-eight *fasciculos lanae*, defendant undertook to pay sixteen-pence for every pound, or according to the best price in the month of October next following, *Clift.* 58.

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For a gold ring, with seven precious stones affixed, sold for sixty pounds, to be paid on the birth of the first girl child defendant should have born, *Brown's V. M.* 4.
For lead sold, *Cl. Man.* 91.

Assumpsit to pay plaintiff for utensils of a house that plaintiff sold to defendant: judgment for plaintiff, after several exceptions in arrest of judgment, after judgment by default, 1. *Lut.* 225.

On a promise, in the exchange of a mare of plaintiff for defendant's horse, to pay money, *Herne*, 175.

R. intending to build, and to retain A. and B. to build, and defendant being a servant of R. in consideration that R. would sell and deliver to A. and B. such timber as they should chuse, promised to pay plaintiff for the same, 1. *Brownl.* 221.

Defendant and one K. possessed of corn in the barn not threshed, defendant sold to plaintiff his part of the corn, and undertook that K. should find one thrasher and defendant another, and that plaintiff should have a moiety of the grain threshed by the bushel, 3. *Brownl.* 65.

On an agreement with plaintiff for the wool and hides of sheep and cattle, which he should kill within a certain time, at stated prices; and promise to pay, *Upper 2. Pr.* 233.

In consideration that plaintiff sold defendant his growing corn, he promised to pay on a certain day, *Co. Ent.* 91.

2. For NOT ACCEPTING, REDELIVERY, OR TAKING BACK, &c. GOODS, CATTLE, &c. BOUGHT. 2d, For DECEIT in the DELIVERY and on WARRANTY. 3d, Concerning GOODS, &c. LENT and LET TO HIRE (*inter alia* of BAILMENTS); and against BAILERS for various Purposes. (20)

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201. *Assumpsit* for game cocks let to hire. 1st Count, for one.
2d Count, for others; and *quantum meruit*.

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112. Count for not *redelivering* skins delivered to defendant to *dress into leather*, which were destroyed by fire, together with defendant's factory. (*See* 4th Count of Declaration in *Assumpsit* relating to Sale, &c. of Goods, *ante*.)
113. Declaration in C. B. on agreement to make a parcel of buckles according to sample; and if not so good, **TO TAKE THEM BACK** and return the money, or goods of as good a quality as the sample: breach that the goods were not so good, and defendant refused to take them back, &c.
130. Declaration in B. R. by a watch-maker, for the price of a gold watch made for defendant, according to his order, but **NOT ACCEPTED**.
134. Declaration on a special agreement, *for not fetching away* remainder of brewing utensils which defendant had bought of plaintiff.
139. Declaration *by original*, *for not fetching away* beans sold.
139. Declaration *by original*, for *deceit* in the *delivering* of an imitation of a topaz for a real one, and a mock china standish for a real one. Count for money had and received. Plea, *non-assumpsit*.
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11. Declaration in *assumpsit* for *deceit* in the delivery of goods sent to the East Indies, pursuant to an order, which goods were accepted by defendant without the knowledge of the nature and quality of the goods, and by the order were to be of different sorts; but some were of an inferior quality, and some, through improper package, damaged; whereby plaintiff was forced to sell at a less price. 2d Count, to deliver marketable goods. 3d Count, goods were to be packed in a merchantlike manner. 4th Count, marketable, and properly packed.
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49. Declaration in B. R. for a mare LET TO HIRE, to be REDELIVERED upon request, and for the reasonable hire, in one Count. 2d Count, to return on request. 3d Count, to return; and stating, defendant received the mare on request. Conclusion to two last Counts. Other Counts.
- 50.
52. Declaration in special *assumpsit* to take back a horse sold to plaintiff as found, and to return the price paid. 1st Count, on the special agreement. 2d Count, on a more general promise; and *conclusion* to both. 3d Count, on a promise that the horse was found, made after he was bought and paid for. Opinion on the implied warranty of a horse.
- 53.
- 54.
- 55.
160. Declaration on a special agreement, *factor* against his principal, for not paying him the money laid out in the purchase of barley, together with the commission, and NOT ACCEPTING the same when received, to be delivered according to agreement.
180. Count for not REDELIVERING to plaintiff a saddle and bridle which he lent defendant to go a journey.
180. Declaration in B. R. against defendant, for NOT ACCEPTING and paying the residue of thirty quarters of barley, bargained and sold by plaintiff to him by sample.
186. Declaration by original; plaintiff was possessed of a quantity of opium, which defendant agreed to buy if the whole should be as good as the sample which was shewn him; and that it should be weighed off in fourteen days; the whole quantity was as good as the sample; and though it was weighed off in fourteen days, defendant refused to accept it.
192. Declaration in B. R. for not delivering a quantity of fish as good as the sample shewn, and for mixing other fish of an inferior quality.
193. Declaration in B. R. for not purchasing a quantity of cotton which plaintiff was about to import into this kingdom, which defendant had agreed to do, on its arrival. 1st Count stated the agreement at length. 2d Count, to be delivered as soon after the arrival as the same was in a merchantable condition. 3d Count, cotton bargained and sold.
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195. Declaration; plaintiffs bought a horse of defendants, which they suspected would soon become unsound, from a

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- swelling it had at the time of the sale; in consequence of which they refused to buy the horse, unless defendant would *take him back again* if he turned out unsound, and REPAY the purchase money: the horse did turn out unsound. 2d Count, in consideration plaintiff would buy, defendant promised to take back, if the disease turned out to be the poll evil.
- 196.
207. Declaration in B. R. against a miller, for *not delivering back* the whole quantity of wheat given by plaintiff to defendant to be ground, and the same weight in meal as the weight of the wheat when weighed into the mill, according to agreement, &c.
216. Declaration in B. R.; in consideration that plaintiff would buy defendant's horse, he promised to return the purchase money and *take him back* within a week, if he disliked him.
223. Declaration *by original*, for not fetching away ashes which defendant had bargained for at so much *per* load, whereby it *took up room* and obstructed plaintiff.
- Declaration for *not taking away* sugars bought at a sale, and paying the remainder of the purchase money, -
- For *not accepting* hops sold to defendant, and paying the remainder of the purchase money, -
- For *not taking away* a rick of rye-grass, and paying the remainder of the purchase money, -
- Bill against an attorney, on a promise to deliver back a gold watch, or pay fourteen guineas for it, by a certain day, -
- Declaration on special agreement; in consideration of one shilling in hand paid, and six pounds for every hundred weight of hops, to be paid on delivery, defendant to buy and accept of plaintiff a quantity of hops of a particular quality, and to be delivered at a particular time: plaintiff delivered the same at the time and place agreed on, but defendant *refused either to accept or pay*, -
- Declaration on a special agreement, by three surviving partners against defendant, for *not carrying away* wood, and paying the price agreed for it, -
- Declaration for *not accepting* of goods when they were sent to defendant, according to agreement on a bargain and sale. 2d Count, on a promise to accept and pay for, in consideration of plaintiff's promise to deliver, &c. -
- Declaration against defendant, for *not taking* all the hops that should grow upon a piece of hop ground of plaintiff's brother, at a certain price agreed on for it. 2d Count, stating the promise to be to take the hops after a certain rate, instead of at a certain price, -
- Declaration in *the palace court of Rochester*; plaintiff bought of defendant several quantities of flour, and paid for it; in consideration whereof defendant promised to deliver it to plaintiff, but delivered only part, -
- Declaration; in consideration plaintiff had delivered to defendant a promissory note to her from a third person, defend-

Mor. Pr. 123

Ibid. 126

Ibid. 128

1, R. P. C. B. 265

Lill. Ent. 19

Pl. Aff. 101

Ibid. 107

Ibid.

Ibid. 135

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ant promised to pay plaintiff so much, or *redeliver* the note within a certain time. 1st Count, on a consideration executory that plaintiff would deliver, &c. 2d Count, on a consideration executed, - - - -

Pl. Aff. 119

In consideration plaintiff sold defendant fifty pieces of cloth, containing two thousand seven hundred and twenty-one ells, at the rate of two shillings and sixpence an ell, amounting to three hundred and fifty-one pounds, defendant undertook to pay in two months from the delivery; and on delivery thereof promised to procure one A. to become bound for the payment of the money on a day certain, *Vidian, 97. Robinsf. Ent. 110.*

In consideration plaintiff would pay to defendant money due to him on a bond, defendant undertook to deliver plaintiff the bond to cancel.

In consideration plaintiff would deliver a cup pawned by J. to defendant, he undertook to pay the sum, &c. pawned for, 1. *Brown's Ent. 54.*

In consideration plaintiff would deliver to D. four cows, which plaintiff sold to defendant for thirty pounds, part whereof was paid, defendant undertook to pay the residue, *Robinsf. Entr. 8.*

In consideration defendant sold to plaintiff fifty coombs of barley for twenty pounds; defendant paid sixpence at the time, and twenty pounds to be paid on delivery; defendant undertook to deliver at the plaintiff's house on a day certain, 1. *Brown's Ent. 67. Thomp. 18. Clift. 96, 97.*

Against a carrier, for goods delivered to him to carry (negligence), *Cl. Aff. 260.*

In consideration plaintiff undertook to pay defendant eight pounds on request, defendant undertook to deliver to plaintiff forty boxes of candles on request, 1. *Brown's Ent. 57.*

Like declaration for calf *not delivered*, *Clift. 91.*

For ox hides, not delivered according to promise, *Ib. 93.* **For** cubit wood, *Ib. 96.*

For two casks of wine sold, and not delivered, *Ib. 938.*

For refusing to redeliver to plaintiff goods delivered to defendant in the nature of a pledge for ten pounds, on tender of the money, *Brownl. Red. 69. Brown's Va. Ms. 10.*

In consideration that plaintiff would sign a bond for payment of money at a day certain, defendant undertook to deliver plaintiff certain goods, *Pl. Gen. 60.*

For not redelivering a gelding which he received to depasture, 2. *Instr. Cl. 77. Cl. Man. 77.*

By executor; in consideration of sixty-six shillings and eightpence paid to defendant by testator, defendant undertook to deliver ten quarters of oats on a day certain, 1. *Brown's Ent. 30.*

In consideration of delivering a gelding to defendant, undertook to redeliver plaintiff a gelding, on a day certain, or pay for him, *Pl. Gen. 43. Cl. Man. 77. Read's Dec. 14. Clift. 64.*

In consideration plaintiff would lend defendant an *ephippium*, defendant undertook to redeliver, *Clift. 90.*

Plaintiff delivered to defendant a gold chain to keep for him safely; defendant undertook to redeliver the chain, or pay thirty pounds in Easter Term next, *Brown's Va. Ms. 6.*

Plaintiff sold the defendant thirty-two bags of wool, at the rate of forty shillings for every hundred, and defendant, in consideration would deliver them before a day certain, undertook to pay, *Brown's Va. Ms. Another, Clift.*

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- For hemp seed growing, sold and not delivered, *Ib.* 94.; and for hay sold, &c. 2. *Inst. Cl.* 125.
- On *assumpsit* of defendant to restore and redeliver certain sacks of one F. P. lent by him to defendant, *Cl. Man.* 110.
- In consideration plaintiff would send back seven geldings which he had distrained for rent, defendant promised to redeliver geldings, or pay him twenty pounds rent, *Read's Dec.* 73.
- In consideration plaintiff delivered defendant a horse in exchange, defendant undertook to pay ten shillings, and deliver him a foal of the value of one hundred shillings, *Cl. Ass.* 199.
- On *assumpsit* to deliver money to one J. J. which plaintiff delivered to defendant, &c. *Ibid.* 209.
- Assumpsit*, for that defendant withheld, and did not deliver to him the evidence, papers delivered to him to keep, *Ibid.* 212.
- Assumpsit* for not redelivering money delivered to wife of defendant, *Ibid.* 273.
- Special *assumpsit* for not delivering a horse bought of defendant, 2. *Mo. Intran.* 53.
- In consideration of a price agreed upon, to deliver to plaintiff all the fowls which defendant should buy after that time, and before Shrovetide, *Clift.* 89. 80. Store of feathers, *Ibid.* For wheat sold and not delivered, *Ibid.* 96.
- For barley; and two *assumpsits*; and breaches for money and wedges of gold received for the use of plaintiff, and not delivered, *Ibid.*
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- Defendant's two sons were indicted for burglary, for which plaintiff obtained a pardon, and they were indebted to plaintiff in forty-two pounds for money laid out for the same; and defendant, in consideration that plaintiff delivered to him the letters-patent of pardon, promised, that if one of the sons did not pay plaintiff said forty-two pounds within one year, then he would, 1. *Brownl.* 215.
- On an agreement between plaintiff and defendant to lend money to defendant on his mortgage of lands; and defendant, in consideration that plaintiff would deliver to C. such goods, promised to accept in part of payment, or redeliver them, *Raft. Ent.* 3.
- On an agreement between plaintiff and others to become bound with defendant for twenty pounds, lent and delivered a writing as an *escrow scdulan* in default of payment; defendant, in consideration that he would deliver the *escrow* as made, promised to deliver plaintiff on the next day wares to the value of twenty pounds, *Herne*, 100.
- Plaintiff pledged to defendant goods, to secure payment of twelve pounds lent on usury; defendant promised, on payment of said twelve pounds, with interest, to redeliver the goods, which he refused to do, *Raft. Ent.* 8.
- Against defendant, for not taking sheep sold out of the pasture of seller, according to agreement, *Clift.* 65.
- Against defendant, for not paying money delivered to him by plaintiff, to be delivered to a third person, *Cl. Ass.* 209. 114.

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- 243. Declaration in B. R. for losing goods, stating the custom; with cases.
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266. Declaration for not delivering three baskets of fish sent by their vessel across the river Severn from the Old Passage to another ferry. (Negligence)

267. Declaration against the owner of a ship, for sailing without a convoy, whereby plaintiff's goods on board the ship were taken.

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269. Declaration against the owner of a vessel for negligence, in carrying goods of plaintiff on freight; whereby some were spoiled and others lost; several Counts; 4th and 5th, on promises to carry goods to N. and there deliver them to some carrier to convey same to B. for not acquainting plaintiff with the carrier to whom, &c. whereby plaintiff lost his remedy against him for not delivering them at B.

273. Declaration for negligence, against a master and owner of a vessel, for losing part of goods belonging to plaintiff delivered to defendant's care. (*See Assumpsit against Owners of Ships, post.*)

274. Declaration by original, for negligently carrying jars of oil from Leghorn to London, throwing them so as to damage the packing, which occasioned their opening and loss of oil. (*See Assumpsit against Owners, &c. of Ships, post.*)

276. Declaration by original against a lighterman, for negligence, in suffering goods to be stolen that were given him to ship on board a ship at anchor in the river Thames.

276. Declaration against the master of a ship, at the suit of consignee; goods sent from London to Jamaica on a bill of lading, freight, primage, and average paid, but not delivered. 2d Count, on the bill of lading, (*See Assumpsit against Owners, &c. of Ships, post.*)

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173. Declaration in B. R. ; plaintiff had in his custody a bill of exchange drawn on A. for prize-money to be paid by plaintiff to J. B. and the representatives of H. M. ; he paid a third-part share of it to J. B. before he had received the money due on the bill, and defendant pretended to be agent to the representatives who were to have the residue of the prize-money; and in consideration plaintiff *would deliver* said bill to defendant, he promised to return him that part of the money plaintiff had paid when he received the money on the bill.
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280. Declaration by original against a *pawnbroker*, for not suffering plaintiff to redeem goods which he had pledged with defendant, but losing the same, which were consumed by fire. (Negligence.) 3d Count, plaintiff tendered, &c. and offered to redeem, but defendant refused to redeliver.
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284. Declaration ; in consideration plaintiff would deliver up certain writings detained by plaintiff as a *security* to B. who was indebted to plaintiff, defendant promised to pay the debt. (*See Assumpsit* respecting Securities, *post.*)

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294. Declaration in B. R. by one *attorney* against another, on a promise to undertake the soliciting and conducting certain business relative to disputes with respect to the appointment of overseers, and to pay one-half the profits to the plaintiff, who had relinquished his retainer, by the consent of the parishioners, in defendant's favour to succeed him.
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301. Declaration by *executrix* of the will of her husband, and she employed defendant, as her proctor and agent, to get a probate of the will; defendant got a probate, but in the court of the bishop of Exeter instead of the prerogative court of the archbishop of Canterbury, whereby plaintiff was put to a great expence in having the will transmitted, &c. &c.
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317. 2d Count, that defendant sued out writ in the name of plaintiff's wife, and that plaintiff was obliged to discontinue.
318. Declaration in B. R. at the suit of an *attorney* for the plaintiff in the original action against the defendant in such action, for the costs of suit, which defendant promised to pay the present plaintiff in case he would cause plaintiff in the former action to compromise the suit.
319. Declaration in B. R. by an *administratrix* (after her intermarriage) against an *attorney*, who was employed by the testator in his life-time to bring an action for him against one A. B. who was thereupon arrested, and committed to the custody of the marshal for want of bail, and remained so until the neglect of defendant in not obtaining judgment, whereby A. B. was discharged.
322. Declaration in B. R. against the *executors* of an *attorney*, for negligence in their testator, as an *attorney* of the palace court, in taking special bail irregularly.
326. Declaration in B. R. against an *attorney* of K. B. for neglecting, on the trial of ejectment (in which present plaintiff was lessor of plaintiff), to produce the probate of a will, for want of which plaintiff was nonsuited.
327. Declaration; in consideration plaintiff, an attorney, would bring a cause in chancery on to a hearing, defendant promised to pay his charges on a day certain.
397. Declaration in B. R. against an *attorney*, the *undersheriff* of the county of G. who promised, that in consideration that plaintiff would forbear from further prosecuting his suit against the sheriff of G. for having taken insufficient pledges in replevin, he would pay as well the debt due to him from the plaintiff in replevin, his costs of defending that action, as also his costs in the suit against the sheriff. (*See Assumpsit to Forbear*, *post*.)
507. Declaration in C. B.; in consideration plaintiff had paid forty pounds with her son as an apprentice (clerk), assigned over by another master an *attorney* to defendant an attorney, he promised to return her twenty pounds if her son did not stay with him three years; he did not stay, and defendant refused. (*See*

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1. On an attorney's bill, for prosecuting and defending
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329. Declaration in B. R. against defendant, who was an
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sign the agreement ; and the purchaser refusing to
complete his purchase, whereby the house was un-
tenanted, and greatly injured by means thereof.

333. Declaration on special agreement, at suit of an auc-
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- was stolen out of the ship. (*See Assumpsit against Carriers, ante.*)
255. Declaration in B. R. against the master of a ship, for not delivering goods to carry by water, but after arrival of ship suffering same to be stolen. (Negligence. *See Carriers by Water, post.*)
265. Declaration against the owner of a ship, for sailing without a convoy, whereby the plaintiff's goods on board the ship were taken. (Misfeasance.)
268. Declaration for negligence, against a master and owner of a vessel, in losing part of goods belonging to plaintiff, delivered to defendant's care.
269. Declaration against the owner of a vessel for *negligence*, in carrying goods of plaintiff on freight, whereby some were spoiled and others lost. (*See Carriers by Water, ante.*)
273. Declaration for *negligence* against master and owner of a vessel, in losing part of goods belonging to plaintiff, delivered to defendant's care. (*See Carriers by Water, ante.*)
274. Declaration by original, for negligently carrying jars of oil from Leghorn to London, stowing them so as to damage the packing, which occasioned their opening and loss. (*See Carriers by Water, ante.*)
276. Declaration against master of a ship at the suit of the consignee; goods sent from London to Jamaica, but not delivered. (*See Assumpsit against Owners, &c. of Ships, post.*)
345. Declaration in B. R. by a sailor against the owner of a ship, which was taken by the enemy and ransomed, and plaintiff was taken as an hostage, and remained in confinement in France a long time as such: defendant refused to pay him his wages during his confinement.
347. Declaration in B. R. against the owner of a ship, for not paying a boy his wages for serving on board the said ship, and also for keeping and detaining the boy's chest and clothes after the expiration of the time for which he was engaged to serve.
348. Declaration against the owner of a ship, for discharging plaintiff (who was captain) whilst he was abroad, and not paying him his wages, and a certain allowance called table-money; and also for seizing plaintiff's books and papers, and particularly a pass, called a Mediterranean pass.
350. A Count, vessel bound for, &c. where directions were to be given for the future conduct of the captain, and to be continued as well homewards as outwards.
351. Declaration in B. R.; plaintiffs were the owners of a ship which wanted repairing, defendant was a *shipwright*, and undertook to complete her repairs in thirty days, in a workmanlike manner, but neither finished the work in the time, nor completed the same in a work-

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- manlike manner; and also in the delivering her out of the dock of defendant she was greatly hurt, whereby she was leaky, and unfit to go to sea. Several Counts.
55. 5th Count, on the retainer as a ship-builder to repair within a reasonable time.
56. Declaration in B. R. against the mate of a ship for *neglect* of duty, not taking care of goods on board the ship, by suffering some to be spoiled and others lost.
57. Declaration in B. R.; plaintiff had delivered a cask of gunpowder to be carried from A. to B. and had insured the same; the defendant, by deviating from the customary passage, was shipwrecked, and the gunpowder was entirely lost: the insurers refused to pay the insurances; and the declaration was drawn against the owners of the ship, for deviating from his usual passage from A. to B.
59. Declaration in B. R. by assignees of a bankrupt against an agent, who, in consideration of *brokerage*, undertook to let to hire plaintiff's ship to commissioners of the navy, and would bring the plaintiff such bills of imprest as he should receive them: breach, that he did not deliver such bills as he received them.
61. Declaration in B. R. on a special agreement by the owners against the captain of a ship, for deviating from his voyage, smuggling goods, &c. whereby the ship was seized, &c.
63. Declaration in special *assumpsit* in B. R. at suit of the owners of a ship against a ship-builder, for not repairing and re-delivering her within a certain reasonable time, for a reasonable reward, according to contract, whereby she became unfit for sea, was obliged to be unloaded, her goods and stores damaged, the voyage and insurance lost, and the profits upon cargo contracted for to be brought from abroad lost, by reason of the alteration of the markets.
66. Declaration in B. R. against the master of a ship, for not permitting the plaintiff to use the cabin of a ship during her voyage.
68. Declaration in B. R. by mate against the captain of a ship, for discharging him abroad, and not paying him his wages.
71. Declaration at the suit of a captain of a ship against a *coal-heaver*, for refusing to unload his ship of the coals therein according to agreement, whereby he was obliged to abate in the price of his coals, and was also otherwise much damaged.
72. Declaration in B. R. for stowing goods, ammunition, &c. in a ship let to freight by plaintiff to defendant for government service, in an improper and unskilful manner, *per quod* plaintiff's ship was greatly injured.
73. 2d Count, for refusing to employ the ship for the time for which she was hired, or to pay for the same,

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- 374- *per quod* plaintiff lost the profits of her, and a large sum of money, which he had expended to fit her for government service. 3d Count, for *divers* other things.
375. Declaration against the *husband* of a ship, for money due to plaintiff for refitting and repairing the ship.
517. Declaration in B. R. by the *executors* of a master of a ship, to recover certain gains stipulated by a charter-party entered into by plaintiff, and of the freighters of the ship, who had become insolvent, and unable to perform their contract, on which account plaintiff was obliged to exhibit his petition against the correspondents of the freighter, who resided abroad; on which a sentence was made that the cargo should be consigned to one W. L. subject to the stipulations of her charter-party, and to certain gains to be made out and home. (*See* Services and Works done and performed, *post*.)

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48. Special *assumpsit* against a master of a ship, for not proceeding to sail to take a load of cod-fish to Scotland, whereby fish became putrid.
- Declaration in B. R. on special *assumpsit* for freight. 2d Count, general *indebitatus assumpsit* for the same,
- Declaration; plaintiff put three hundred barrels of oats on board defendant's ship, then in the port of Dublin, to be transported to London; defendant promised to set sail within a fortnight after the bills of lading were signed, but stayed two months longer, so that the oats were spoiled, and plaintiff lost his market,
- On a special agreement, by a mariner against the master of a ship, for the non-payment of plaintiff's wages,
- Declaration against the *husband* of a ship, for money due to plaintiff for repairing and fitting out the ship,
- Declaration by executrix to her deceased husband, for wages of his apprentice, due from the master of a ship on a voyage to the East Indies,
- Declaration in the borough court of Liverpool against a *mate* of a ship, who after he had been hired to go a voyage refused to serve,
- Declaration in B. R. in *assumpsit* against the master of a ship, who undertook to carry liquors for plaintiff on freight, and by negligent stowing, flaving them,
- Declaration in *assumpsit* on an agreement by defendant and two others to serve plaintiff on board of his ship on a summer's voyage in a cod fishery, under a penalty of fifty pounds,

Pl. Aff. 411

Mor. Pr. 136

Ibid. 185

Mor. Pr. 213

Lill. Ent. 53

Ibid. 145

Pl. Aff. 142

Ibid. 260

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- 376.** Declaration by original against defendants, for putting improper cement on the walls of plaintiff's house, and for not building according to contract. 1st Count, as architects, builders, and surveyors, and proprietors of a certain cement to case houses, to make them resemble stone, for inartificially executing their contract with plaintiff, to survey and superintend the building of his museum, and casing it with cement, so that it became ruinous. 3d Count, as surveyors. Three other general Counts. 6th Count, to build with sound materials; and although defendants did build, yet timbers, &c. became rotten, &c.
- 384.** Declaration in B. R. by the Company of Brewers of London against defendant, a SURVEYOR, for not surveying an estate belonging to the said Company, and making a plan thereof according to his promise, for which they had paid him in part a large sum of money. (*See Assumpsit to perform Works, post.*)
- 385.** Declaration against a SURVEYOR, for not making a survey in a good and sufficient manner, contrary to his promise.
- 386.** Declaration in B. R. on a special agreement between the plaintiffs (two BRICKLAYERS) against defendants (who were CARPENTERS, and partners in trade), that plaintiffs should do the bricklayers work of a church which defendants were under a contract to build, and that defendants would pay the plaintiffs: breach, non-payment. (*See Services and Works done, post.*)
- 388.** Declaration in B. R. on a special agreement; plaintiff had been retained as a PLASTERER, to do some business within a certain space of time; he employed defendant to do a part of such business within a certain time; defendant began but refused to finish, *per quod* plaintiff obliged to employ others at a much greater expence.
- 389.** Declaration against a LAND SURVEYOR, whom the plaintiff had employed to value some land, on a mortgage on which plaintiff was about to lend a sum of money, for reporting that the same was sufficient to secure his principal and interest, when, in fact, it was of much less value, *per quod* plaintiff is in danger of losing his money in consequence of defendant's report.
- 392.** Declaration in B. R. against a SURVEYOR, whom plaintiff had employed to enquire into, examine, and survey divers messuages and premises which plaintiff was

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in treaty to buy, for making a false report of premises being in good repair; in consequence of which representation plaintiff bought the premises, which proved to be in a ruinous condition.

Declaration for drawing plans, surveying houses, &c. at the suit of a *surveyor*. (See *Indebitatus Assumpsit* by and against particular Persons.)

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43. Declaration in C. B. at the suit of the *Guardians of the Poor* against a *surveyor*, on a contract to design a plan for a workhouse, erected by act of parliament, superintend the buildings, inspect the workmen's bills, &c.: breach, for allowing workmen more than he ought.

On Contracts more particularly relating to PERSONS.

I. Of INDEMNITY, and to INDEMNIFY. (31)

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93. Count in consideration that plaintiff would indemnify defendant, and perform and do certain things which defendant had covenanted to do by certain articles of agreement.
462. Declaration in B. R. by co-executor, and in fact the only acting *executor*, of the will of H. B. who had, according to several devises, administered assets, and placed the same out on government securities: defendant, on behalf of several remainder-men, applied to the plaintiff to transfer, and plaintiff to be indemnified, as well himself as the other *executors*, caused a letter of attorney, and a bond of indemnity. to be drawn, but refused to execute or assign, unless defendant would pay for drawing the letter of attorney, &c.: defendant undertook, &c. but did not pay.
211. Declaration in B. R. by *administratrix*; in consideration that testator would purchase an *annuity*, defendants undertook to *guarantee* such payment in consideration that plaintiff would permit him to sue in his name.

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477. Declaration by *original* against defendant, who had received a sum of money from the father of a bastard-child, with which he was to indemnify the parish, and pay a weekly allowance for the support of it. the parish officers agreed to let the defendant have the money in his hands, on condition of paying one shilling and sixpence for every week which the said child

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should be chargeable to the parish; and opinion on the evidence, &c.

479. Declaration in B. R. by *churchwardens and overseers* of a parish against a surety for the putative father of a bastard-child, who was apprehended under a warrant backed by another magistrate in another county; in consideration that they would permit him to go at large, defendant undertook to indemnify the parish for one month, till the father could find security.
121. Declaration for value of skins *delivered* to defendant *to dress into leather*; and which, together with defendant's factory, were destroyed by fire, on an implied contract to indemnify. (*See the other Counts. Assumpsit concerning Sale, &c. of Goods, &c. ante.*)
449. Declaration in B. R. by master of a ship, on a promise to indemnify him against any damages he might sustain in any action which might be brought by the owner for plaintiff's breaking his charter-party, in deviating out of his voyage: the owner brought his action, and the master let judgment go by default.
455. Declaration in B. R.; in consideration that plaintiff would join with one W. C. in making a promissory note, payable to defendant, for his accommodation, he undertook to indemnify plaintiff, and to provide for and take up the note; plaintiff accordingly joined in the note; defendant negotiated it, but did not take it up when due: indorsee brought an action thereon against plaintiff, whereby he was obliged to pay, &c.; yet defendant hath not indemnified him, &c.
456. Declaration *by original*, on a promise of indemnity, for not indemnifying plaintiff accepting of a bill of exchange drawn by defendant, which he promised to pay when due, but did not, and plaintiffs were forced to pay it, together with costs, on a judgment obtained against them thereon.
459. Declaration for not indemnifying plaintiff against a joint note.
465. Declaration; in consideration that defendants had been arrested and sued by one A. B. they undertook to indemnify plaintiff in any costs arising from his becoming bail for them; but defendants failed so to do, whereby plaintiff was greatly damaged.
466. Declaration for not indemnifying plaintiff according to his promise, if he would become co-assignee with him under a commission of bankrupt against one J. L. in consequence of which he was put to great expence in defending two actions brought against them as such co-assignees; defendant refused to reimburse or indemnify plaintiff.

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467. Declaration; in consideration plaintiff would assist defendant in making a distress on the goods of another, he promised to indemnify: plaintiff did assist defendant, and plaintiff and defendant were afterwards sued in the palace court, and judgment obtained against them, when defendant refused to indemnify, *per quod* plaintiff was taken in execution.

469. Declaration *by original*, for not indemnifying plaintiffs, acceptors of a bill drawn by defendant, which he promised to pay when due, but did not, and plaintiffs were compelled to pay it, together with costs, on a judgment obtained against them thereon.

470. Declaration in B. R. by *executor* and *executrix* against defendant, for not having indemnified testator, his tenant from year to year, who was evicted from the premises by the mortgagee, *per quod* he lost his crops.

472. Declaration in B. R.; in consideration of plaintiff's *assigning* to defendant the remainder of his term in certain premises, and of permitting defendant to receive certain arrears of rent due to plaintiff from his under-tenant, defendant promised to pay to plaintiff's lessor the rent due, and indemnify him from any action on that account against defendant, for not paying the rent, *per quod* an action of covenant was brought against plaintiff by lessor. (See *Assumpsit* concerning Sale, Assignment, &c. of Lands)

475. Declaration against a *broker*, on a special agreement that he should guarantee and indemnify plaintiff for any losses he might sustain on the resale of cottons which he had bought of defendant, and on which he had allowed him an additional premium for guaranteeing and indemnifying plaintiff from his losses.

513. Declaration in B. R.; in consideration plaintiff would carry a venture, consisting of shoes, to Jamaica, the defendant *guaranteed* a profit of ten *per cent.* a loss arose, and defendant refuses to pay. (See *Services done, perform Works, post.*)

Declaration by one of the bail against the *executors* of defendant, in a cause for whom he was bail, for the damages which he had sustained on account of his becoming bail,

Pl. Aff. 55

Declaration in B. R. in *assumpsit*, by the surety in a bond, for money which he was obliged to pay as a surety. 2d Count, for money paid,

Ibid. 244

Declaration by the under-sheriff deputy, who was also his surety in his bond to the high sheriff against him, for debt and costs in an action which plaintiff was obliged to pay, by letting the defendant therein go at large without bail at defendant's request, and upon his promise to indemnify plaintiff, which he afterwards refused,

Ibid. 287

Declaration in an action upon a special promise to pay plaintiff a sum of money, or render the body of S. B. to prison,

2. Ld. Raym. 1396

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Declaration against the defendant for not indemnifying plaintiff, who became his bail, in an action in B. R. at his instance and request, and upon the defendant's promise and undertaking to indemnify him: plea, that he became a bankrupt, and cause of action accrued before he became such,

2. Will. Rep. 262.

Declaration on a promise to indemnify plaintiff against a note given him, payable to defendant or order, for his accommodation, which plaintiff was obliged to pay to defendant's indorsee,

Pl. Ass. 38

Declaration against defendant; plaintiff had joined with him in a note to pay several sums to several persons (which defendant promised to indemnify him from), whereby plaintiff was prosecuted and obliged to pay part of it, and also to be answerable for any bills drawn by defendant on G. and E. according to the tenor of his promise. 2d Count, on a promise by defendant to pay plaintiff what he might pay by reason of another joint note entered into by wish of defendant, and on his account, averring that he paid so much. 3d Count, on a promise to indemnify plaintiff on a similar consideration as the last, and averring that the drawee of the note sued him upon it, whereby he was obliged to pay debt and costs,

Ibid. 92

Declaration; in consideration of defendant's being indebted to plaintiff in six pounds for horse-meat, &c. defendant promised either to pay it or indemnify plaintiff from a note he had given to a third person for six pounds rent; but did neither,

Ibid. 142

Declaration in C. B. on a promise of indemnifying plaintiffs if they would become bail for the appearance of the defendant before the barons of the exchequer, in an information by the attorney-general, which they accordingly did; and defendants not appearing, the plaintiffs were obliged to compound the prosecution,

Mor. Pr. 156

Against an executor, upon a promise made by the testator to save the plaintiff harmless, *Brown's Va. Me.* 32. By executor, on *assumpsit* made to testator, 2. *Instr. Cl.* 131. Case against one who undertook to pay two shillings for every day a stranger should keep two geldings beyond ten days, *Cl. Man.* 71.

In consideration that plaintiff would lend to one E. ten pounds for six months, defendant undertook that he and one J. would become bound with said E. to the plaintiff in twenty pounds, for the payment of said ten pounds on the day; and defendant refused to sign the bond and money was unpaid, *Brownl. Red.* 23.

On a special agreement in writing to transfer credit in the Bank of England, *Lev. Entr.* 27.

In consideration that plaintiff would venture his money with defendant's son in a voyage, defendant promised that he and the son would become bound to plaintiff in a bond, with condition; and defendant and his son refused to sign, *Herne*, 85.

Defendant, in consideration of four pounds, promised to deliver to plaintiff a quantity of lead at a certain day, and for security thereof to become bound to plaintiff on request before the day to pay eight pounds, *Herne*, 132.

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- On an agreement to sell plaintiff a house, and indemnify him in pulling down the house, &c. *Clift. 44.*
- Defendant bought a cow of R. which R. would not deliver unless plaintiff could give him security for payment of the money on that day; defendant did not pay the money at the day, for which plaintiff threatened to sue, and he was obliged to pay, 1. *Brown. Ent. 32.*
- Plaintiff and defendant became bound with J. for the defendant for the debt of J.; in consideration that plaintiff had sold defendant beasts at such prices, defendant promised to keep plaintiff indemnified for the debt, but did not; by which plaintiff was sued, and obliged to pay the debt with costs of suit, 1. *Brown. Ent. 40.*
- Plaintiff, at the instance of defendant, was bound with him for payment of money, and defendant promised to keep him harmless, which he did not do, by which plaintiff was sued in C. B. on the bond, and was forced to pay twenty pounds in discharge of the debt, 1. *Brown's Ent. 68.*
- Defendant was a prisoner in execution in N.; and defendant, in consideration that plaintiff would be bound for the debt and damages in discharge of defendant from prison, he promised to keep plaintiff indemnified, which he did not, *per quod* plaintiff, to avoid law expenses, paid the money, 1. *Brown. Ent. 74. Cl. Aff. 215.*
- In consideration that plaintiff would give his consent to defendant to defend a suit in ejectment in plaintiff's name, defendant promised to indemnify him from all damages that should be adjudged against him, and plaintiff was taken in execution, and paid nineteen pounds for damages, costs, and charges, &c. *Thomp. 12.*
- In consideration that plaintiff was bound with defendant in eighty-two pounds, defendant promised to indemnify plaintiff, which he did not, and plaintiff was taken on a *capias utlagatum*, and was obliged to pay money, &c. in defence of the suit, *Brown's Meth. 8.*
- Against defendant, for not indemnifying plaintiff in pulling down his house, according to agreement, *Clift. 44.*
- Plaintiff became bound to sheriff for the appearance of C. at suit of defendant, on an attachment of privilege; sheriff was amerced for want of appearance; defendant, in consideration of forty shillings, promised to indemnify plaintiff from the bond, but the sheriff sued plaintiff, 3: *Brownl. 103.*
- Defendant was bound to the sheriff for plaintiff's appearance, who did not appear; and defendant, in consideration of fifty shillings in hand paid by plaintiff, promised to indemnify plaintiff by bond, which he did not do, but sheriff impleaded plaintiff thereon, and had execution against him, *Robins. Ent. 92.*
- In consideration that plaintiff would be bound with defendant, he promised to pay money at the day, and to indemnify plaintiff, who was sued, and forced to pay debt and costs, *Brownl. Reel. 9. Read's Dec. 59.* And on a bond for appearance, and defendant did not appear; and *indebitatus assumpsit* for money demanded, *Clift. 79.*
- On a promise to indemnify plaintiff for taking a distress, *Ib. 80.*
- On a promise to indemnify plaintiff, who was bail for appearance of defendant before justices at sessions, *Cl. Aff. 216.*
- To indemnify, for four pounds given by one bail to another, *Robins. Ent. 92.*
- E. recovered judgment in an action for slander, and had damages forty-seven pounds against plaintiff, who sued in trespass against defendant's brother; and defendant, in consideration of sixteen pounds paid to him to the use of E. and plaintiff, that plaintiff would not further prosecute, promised to indemnify him from all damages to be recovered by E. against him; but E. took plaintiff in execution on the said judgment, *Robins. Ent. 106.*
- Plaintiff, at the instance of defendant, became bound with him for payment of money, and defendant promised to indemnify; but plaintiff was arrested, and in custody till he could give security, and was obliged to pay large sums of money, *Hanf.*

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In consideration that plaintiff would be bound for defendant in twenty-two pounds; defendant promised to indemnify plaintiff; but he was sued in C. B. on the bond, and after judgment paid the money, to avoid a prison, *Brownl. Red. 27.*

By executor, on *assumpsit* of testator to indemnify plaintiff for his security, *Brown. Va. Me. 32.*

For not indemnifying plaintiff for becoming bail, *Cl. Man. 74. 2. Instr. Cl. 129. 131.*

R. was indebted to N. in ten pounds ten shillings; in consideration that plaintiff would be bound with R. to N. in twenty pounds for payment of said ten pounds ten shillings, defendant promised to indemnify; but plaintiff was obliged to pay thirteen pounds in discharge of the bond, *Brown's Va. Me. 4.*

Defendant did not discharge plaintiff, in payment to executor, for agistment of sheep which defendant sold to plaintiff, &c. *Cl. Ass. 208.* Defendant did not exonerate his bail, *Ib. 215.*

In consideration plaintiff would be bound with defendant to M. defendant promised to sign a bond of indemnity to plaintiff, 1. *Brown. 32.*

In consideration that plaintiff, an undersheriff, would endeavour that a writ of *ca. sa.* should be executed, defendant promised to give him five pounds and keep plaintiff harmless, who caused the party to be arrested, who was led into parliament and discharged, and plaintiff was obliged to bestow much labour, and expend seven pounds therein, *Herne, 120.*

L. denised lands to plaintiff for a term of years at a certain rent; defendant, in consideration that plaintiff would assign the term of years to him, promised to pay the rent, or keep plaintiff indemnified: defendant neither paid the rent nor kept plaintiff indemnified, who was forced to pay the money, without alledging that there was any suit, 3. *Brownl. 51.*

R. was arrested by plaintiff in the Tower court, London; and defendant, in consideration that plaintiff would be bail for him, promised to give plaintiff twenty pounds if damaged, and plaintiff after judgment was taken in execution, and detained till he paid the money, *Herne, 121.*

Defendant, in consideration that plaintiff would become bound for a debt, promised to keep him harmless; and plaintiff's goods were taken in execution by a *fi. fa.* *Ashton, 37.*

Defendant requested plaintiff to become bound to sheriff for the appearance of W. indicted for murder, and promised to keep plaintiff harmless; W. did not appear; for which sheriff at *nisi prius* obtained debt and damages of plaintiff, *Rast. Ent. 11.*

2. In Consideration of FORBEARANCE, &c. to Sue, Distrain, and of GIVING TIME to Pay. (32)

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405. Count by *landlord* against the assignees of *tenant*, in consideration plaintiff's would not dispute defendant's assignment, but forbear to disturb their possession, and the goods, &c. and a Count in consideration plaintiff would *forbear to distrain* for one year's rent, &c. (See *Landlord and Tenant, ante 15, 16.*)

401. Declaration on an *assumpsit* to pay the debt and costs for a *third person*, in consideration of discontinuing plaintiff's suit, and discharging defendant out of custody. 1st Count states the whole case, cause of action, ar-

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- rest, and defendant's promise, "that he or his executors should pay so much by instalments for debt and costs, &c. in a promissory note to plaintiff, where no stamps could be procured at the time;" and declares for two instalments. 2d Count omits the cause of action, and the mention of executors in the promise.
403. 3d Count more general, omitting the arrest, stating only that plaintiff had instituted a suit, promise by defendant to pay, omitting the instalments, in consideration of discontinuing the former suit, and general forbearance. Opinion on the necessity of stamps on the promissory note, 24. G. 3. c. 7. s. 8. if declared on, or if on the agreement, 23. G. 3. c. 58. s. 4.
407. Declaration in B. R.; in consideration plaintiff would not put a bond in suit against defendant whilst sole, as administratrix, she promised to pay both principal and interest on the bond in a short time: the action brought against *baron and feme* after her intermarriage.
408. Declaration in B. R.; in consideration of plaintiff's giving further time for the payment of the principal of a bond carrying interest at two and a half *per cent.* defendant promised to pay increase of interest at five *per cent.*
410. Declaration in the *palace court* against defendant, who, in consideration plaintiff would not enter up judgment on a warrant of attorney against one A. B. who had made default in paying the money, promised to pay, or render the body of A. B. but did neither. (See Default of a Third Person, *post.*)
412. Declaration in B. R. by an attorney against defendant, a goaler (having suffered a prisoner to escape, in his custody under an attachment for non-performance of an award made by order of *nisi prius*, in a cause between plaintiff's client and the prisoner, for which escape plaintiff's client had brought an action against the sheriff, then at issue), on a promise, if plaintiff would cause proceedings to be stayed in the action against the sheriff, that defendant would pay plaintiff the costs, as well in the former action as in the present. (See Services, &c. *post.*)
415. Declaration by executrix of the master of an apprentice (the defendant), for money promised if the master would not take advantage of breach of covenant, in defendant's leaving his service formerly, and would endeavour to procure him to be made free of a company. (See Services, *post.*)
50. Declaration in B. R. landlord against his tenant, who had dug iron ore out of the lands held under demise from plaintiff to A. B. (and the lease determined) without plaintiff's leave; in consideration plaintiff would not sue defendant for the same, promised to pay plaintiff the value of the ore. (See Landlord and Tenant, *ante.*)

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59. Count on an agreement; plaintiff having recovered possession of a messuage in which defendant lived by ejectment, in consideration that plaintiff would permit defendant to continue in it for a certain time, he promised to keep the same open as a victualling house, and to deliver possession at a certain time, or forfeit fifty pounds. (*See Landlord and Tenant, ante.*)
419. Count in a declaration; defendant, as agent for the purchaser of an estate, paid part of the purchase in cash, and the remainder in Mosney post bills, which were returned dishonoured to defendant, who promised, in consideration plaintiff would forbear to sue, and give day of payment for a reasonable time, to pay the amount of the bills with interest.
420. Declaration by original; in consideration that plaintiff would *forbear to sue* defendant (whose wife was administratrix) for a legacy left to plaintiff's wife, for a fortnight, defendant undertook, &c. 2d Count, in consideration plaintiff would forbear till Christmas-day, a further time.
423. Declaration; in consideration that plaintiff would forbear to issue an attachment, pursuant to a rule obtained on the master's allocatur in the original cause to set aside the interlocutory judgment for irregularity, the defendants undertook, &c. 2d Count, stating, that defendants had paid five guineas in part payment, and in consideration of forbearance to issue the attachment for the remainder undertook, &c. 3d Count, in consideration, &c. would pay the remainder of the costs latter end of the week. (*See in Defaults of a Third Person, post.*)
425. Declaration in B. R. against the assignees of a tenant for the benefit of creditors, to pay the landlord his rent of a farm, in consideration of his forbearing to *distrain* goods on the premises, when part of the rent had been paid. 2d Count, for three years rent, not stating any part paid. (*See Landlord and Tenant, ante.*)
427. Declaration in B. R. on a promise in writing (which was a promissory note not negotiable) to pay the debt of another, in consideration of forbearance generally in the first Count. 2d Count, on forbearance for a month; with an opinion as to declaring on such note on a promise, to take it out of the statute of Frauds. (*See in Defaults of a Third Person, post.*)
429. Declaration in B. R.; in consideration that plaintiff would forbear to *distrain* the goods of J. S. his tenant, for rent arrears, defendant, who had cattle on the premises which he was about to sell, undertook to pay the rent then due, and what would become due at Midsummer. 2d Count, stating J. S. to be tenant for year and half, at thirty-two pounds ten shillings, and that forty-eight pounds fifteen shillings was due for one
- 430.

year

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431. year and half rent. 3d Count, that plaintiff intended to distrain by his two bailiffs, naming them. (*See in Default of a Third Person, post.* and Landlord and Tenant, *ante.*)
432. Declaration in C. B.; in consideration that plaintiff, who was a *constable* of the parish, would *forbear* to offer himself to contract for conveying vagabonds, &c. under 17. G. 2. c. 5. s. 16. defendant, who was also a constable, undertook to allow plaintiff twenty pounds *per annum* if he had the contract.
104. Declaration against tenant, against whom an action of ejectment was pending, on his promise to give plaintiff possession, and to, if he would discontinue, repair the fences and pay plaintiff his costs; defendant delivered up premises, but refused to fulfil the remainder of his agreement. (*See Landlord and Tenant, ante.*)
107. Declaration on a promise, in consideration that plaintiff would GIVE TIME TO PAY the remainder of a sum of money (part being paid to bind the bargain) for a quantity of hay *sold* by plaintiff, remainder to be paid at Michaelmas next, and then to take away the hay, but if he should suffer the hay to remain on the land after that day defendant promised to pay rent for that land; defendant did neither pay the remainder, or clear away the hay at the time, or pay the rent for the lands. (*See Assumpsit relating to Sale of Goods, &c. ante.*)
436. Declaration in the palace court; in consideration plaintiff would forbear to arrest or commence any action against defendant for a debt due on a promissory note, she promised to pay the debt. 2d Count, for a debt due generally, omitting promissory note.
439. Declaration by original; in consideration plaintiff would discontinue his action commenced, defendant promised to pay plaintiff's attorney all costs as between attorney and client.
441. Declaration in B. R. *against an attorney*; in consideration that plaintiff, at defendant's request, had withdrawn the record, and engaged to stay the proceedings in an action against defendant, he undertook to pay half his costs at a particular day.
442. Declaration in B. R. by *executor*; in consideration plaintiff's testator would withdraw a record in an action of trespass, when a cause was ready for trial, and witnesses come a long way out of the country, defendant promised to pay plaintiff's testator fifty pounds, and all the costs of the witnesses. 2d Count, saying, divers witnesses, not naming them by name, as in the first Count: plea. statute of Frauds.
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433. Declaration in B. R.; in consideration plaintiff would permit defendant to take a bill of sale from a *third person* of his effects, which had been taken in execu-

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tion at plaintiff's suit, he undertook to pay the debt and interest, provided no extent issued at the suit of the crown for three months, and a sufficiency was left in his hands to satisfy her debt.

395. Declaration in B. R. against *assignee of a bankrupt*, who had promised, in consideration that plaintiff, who had an execution on defendant's goods, would withdraw the same, and cause goods to be delivered to defendant, he would pay plaintiff ten pounds, and the costs of entering up the judgment, &c.

397. Declaration in B. R. against an *attorney*, the under-sheriff of the county of G. who promised, that in consideration that plaintiff would forbear from FURTHER PROSECUTING his suit against the sheriff of G. for having taken insufficient pledges in replevin, he would pay plaintiff as well the debt due to him from the plaintiff in replevin, his costs of defending that action, as also his costs in the suit against the sheriff: proceedings in replevin set out. (*See Assumpsit against Attornies, ante.*)

408. Declaration by *original*; in consideration of forbearance to DISTRAIN the goods of J. S. promise to pay the rent.

Declaration at suit of an EXECUTRIX, for non-payment of money promised to the testator, in consideration of his not DISTRAINING on defendant's goods for rent arrear,

Declaration on a special agreement; in consideration of one hundred pounds advanced to defendant when in indigent circumstances, he promised to pay one hundred and fifty pounds when he was worth two thousand pounds,

For non-payment of a debt which defendant undertook to pay for a person whom plaintiff had arrested by bill of Middlesex, and proceedings were stayed at defendant's request, in case that person did not pay the same in one month,

Declaration by *administratrix*, in case, on *assumpsit* to pay costs in chancery, in consideration that the intestate forbore to prosecute contempts, and gave day of payment,

Declaration for breach of a promise, where plaintiff had been possessed of goods which defendant converted to his own use; and on plaintiff's undertaking not to bring an action against him for the goods, defendant promised to pay him as much as they were worth. 2d Count, in consideration that plaintiff had released to defendant the goods of plaintiff theretofore converted by defendant to his own use, defendant promised to pay plaintiff their value,

Declaration; in consideration plaintiff would not put a bond in suit against defendant whilst sole, she, as *administratrix* of the other, promised plaintiff to pay both principal and interest due on such bond in a short time,

Declaration for the costs in a former action under the following circumstances: defendant, in consideration that

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Mor. Pr. 189

Ibid. 139

Ibid. 152

2. R. P. C. B. 134

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Ibid. 121

plaintiff,

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- plaintiff, who was clerk in the crown office, would not try the cause then at issue, and record made up, notice of trial given, and *habeas corpus* made out, and for business done by plaintiff for defendant in the crown office, promised to pay debt and costs, but only paid debt, - - - Pl. Aff. 123
- In consideration plaintiff, an attorney in C. B. would not try a cause at his suit against one Rudd in the exchequer, defendant promised to pay him debt and costs, - - - Ibid. 125
- Declaration against tenant, against whom an action of ejectment was pending, on his promise, if plaintiff would *discontinue*, to deliver possession, repair, and pay plaintiff his costs; defendant delivered possession, but refused to fulfil the remainder of his agreement. (*See* Landlord and Tenant, *ante.*), - - - Ibid. 104
- Declaration in the exchequer; plaintiff arrested defendant for a debt of one hundred pounds; in consideration he would discontinue that action, defendant promised to pay debt and costs to that day; and paid debt, but not costs, - - - Ibid. 127
- Bill against an attorney, for promising to pay costs of his client in a cause for a trespass and assault to the plaintiff; if he would put off the trial of it after the record was made up and sent down to be tried, paying him one pound eleven shillings and sixpence for the damages, - - - Pl. Aff. 157
- Declaration on an agreement, that in consideration of ten pounds, plaintiff would not prosecute a man for getting his daughter with child, and would maintain the bastard-child for four or five years, - - - Mod. Ent. 125
- Declaration on a promise to pay forty pounds to the plaintiff, in consideration the said plaintiff would not further prosecute a suit then begun in the court of common bench for a trespass, - - - Ibid. 126
- Declaration on a promise, in consideration the plaintiff would not sue for a debt, - - - Ibid. 134
- Declaration in *assumpsit*, that in consideration plaintiff, at the request of defendant, had consented and agreed to accept and receive from B. a composition of so much in the pound, upon a certain sum of money owing from B. to A. in full satisfaction and discharge of the debt, B. promised to pay, - - - 2. H. Bl. Rep. 317
- Declaration in *assumpsit*; in consideration that plaintiff would forbear to execute the writ now delivered to the sheriff on a judgment recovered against B. C. the defendant promised to pay debt and costs, together with the sheriff's poundage, bailiff's fees, and other charges, - - - Ibid. 312
- Declaration on a promise, in consideration plaintiff would not sue for a debt; with an objection to the consideration, - - - 1. Mod. Ent. 134
- Declaration on a promise to pay forty pounds, in consideration that plaintiff would not prosecute a suit then begun in C. B. for a trespass, - - - Ibid. 126.
- Against *baron* and *feme*, where W. laying in *extremis*, requested his wife, whom he made executrix, to pay plaintiff money that he was indebted; and after the husband's

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- Said's** death, having an interest in a term, in consideration that plaintiff would not molest or sue her, but give payment till a certain day, she promised to pay, or to assign the term for a security, 9. *Co.* 91.
- Against** the widow of one bound to plaintiff, who died intestate, and administration committed to defendant, who was possessed of goods to pay plaintiff beyond funeral expences, and plaintiff intended to sue defendant; who, in consideration that plaintiff would give him a month's time for the payment of the money in the condition, promised to pay, 3. *Brown's Ent.* 49.
- Against** administrator, where intestate was indebted to plaintiff by bond; and defendant, after administration granted, in consideration that plaintiff would give day of payment till, &c. promised to pay with interest.
- In** consideration that plaintiff, lord of a manor, would give defendant time to pay a fine imposed for his admission to copyhold tenements, defendant promised to pay at the next court to be held in the manor, 1. *Brown's Ent.* 9.
- In** consideration that plaintiff would forbear to sue defendant for a debt due to plaintiff for money received, he promised to pay, 1. *Brown's Ent.* 55.
- In** consideration plaintiff would forbear, for two hundred days, to sue for money laid out, defendant undertook to pay on request, 1. *Brown's Ent.* 75.
- Assumpsit**, in consideration of forbearance to sue, *Robinson's Ent.* 100.
- In** consideration that plaintiff would sell W. (who was already indebted for woollen cloth) other woollen cloth to the value of fifty shillings, and would give him time to pay, defendant promised to pay both sums on a day certain, *Robinson's Ent.* 101.
- In** consideration that plaintiff would give time to pay a legacy of ten pounds, bequeathed by plaintiff's grandfather, and in defendant's hands, to remain till plaintiff's age of twenty-four years, the interest, thirteen shillings and fourpence, to be paid annually, defendant promised to pay the legacy, with interest due, *Brown's Red.* 15.
- Assumpsit** against an executor; plaintiff became bound with testator in one hundred and twenty pounds, and paid the same, with interest, at the day; and in consideration thereof testator undertook to pay that money with interest at the end of one year, 1. *Brown's Ent.* 27.
- Against** executor; testator indebted, and defendant having assets sufficient, in consideration that plaintiff would give day of payment till, &c. promised to pay, 1. *Brown's Ent.* 45.
- Testator** indebted to plaintiff in ten pounds, part of a marriage portion, in consideration that plaintiff would abstain till the feast of, &c. defendant promised, &c. 1. *Brown's Ent.* 65.
- Against** administrator *durante minore etate* of testator; a devise to plaintiff and sisters his whole estate; and plaintiff requested payment of his part of testator's goods; and defendant, in consideration that plaintiff would forbear to prosecute, and would accept sixty pounds for his part, promised to pay within a month, 2. *Brown's Ent.* 27.
- Against** administrator, where intestate was indebted to plaintiff on bond, and plaintiff intended to sue defendant for debt unpaid; in consideration that plaintiff would forbear to sue, and would give defendant time to pay until, &c. promised, &c. 1. *Brown's Ent.* 56. *Hanf.* 36.
- In** consideration plaintiff would pay part of the damages recovered against plaintiff by E. F. in an action of slander, and would not further prosecute, defendant promised to discharge plaintiff of a judgment recovered by E. F. against him, *Robinson's Ent.* 106.
- Against** administrator, where testator was indebted to plaintiff for money received of plaintiff, who, for obtaining the debt, had prosecuted a *latitat* against defendant, and gave him notice; and who, in consideration that plaintiff would not arrest defendant,

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- and would cease from further prosecution, promised to pay the debt and costs, 1. *Brown's Ent.* 72.
- Against *baron* and *feme*, administratrix, where intestate was bound to plaintiff in a bond, and plaintiff, for the recovery thereof, intended to sue, whereof *feme*, while sole, had notice; in consideration whereof, and that plaintiff would forbear, she promised to pay interest immediately, and debt within a reasonable time, *Vidian*, 95. *Robinson's Ent.* 103.
- By administrator; intestate had sued defendant in *assumpsit*; in consideration that intestate would cease from further prosecution, defendant promised to pay thirty shillings for costs and expences when demanded, 1. *Brown's Ent.* 15.
- T. gave several *legacies* to plaintiff's boys, who intended to sue executor, and gave notice; in consideration that plaintiff would procure the boys to desist until, &c. promised to pay plaintiff for the use of the boys, &c. the several legacies on that day, 1. *Brown's Ent.* 71.
- Against *baron* and *feme*, where wife, when sole, was indebted to plaintiff in thirty-five pounds, for recovery of which plaintiff intended to sue; and defendant, in consideration that plaintiff would not sue, promised to pay five pounds *per annum* until the whole should be paid, *Mod. Entr.* 24.
- Against the bailiff of a liberty, who on arrest promised that his prisoner should appear at the day, or he would pay the debt, *Robinson's Ent.* 204.
- In consideration that plaintiff would desist from prosecuting his suit, on the bond of the ancestor, against the heir, he promised to pay the money mentioned in the condition, 2. *Sand.* 134.
- In consideration plaintiff would not further prosecute defendant in an action of trespass, defendant promised to pay plaintiff forty-two pounds, *Cl. Man.* 124.
- In consideration that plaintiff would not proceed or sue in ejectment of lands for one month, defendant promised to deliver possession of premises to plaintiff within a month, and to pay the arrears of rent due for premises, *Read's Dec.* 15.
- In consideration plaintiff would not sue defendant's brother for twelve pounds, residue of a larger sum, *Ibid.* 43.
- Assumpsit* by a stranger for the debt of defendant, if plaintiff would not further sue, *Ibid.* 45.
- In consideration plaintiff discharged W. H. who was arrested at the suit of plaintiff, defendant undertook to pay the debt, *Read's Dec.* 55.
- In consideration of withdrawing the action out of the court of the admiralty against G. I. and L. G. defendant being a creditor, promised to pay, *Cl. Aff.* 189.
- Plaintiff let a mare to ride from place to place, and to be paid for riding to mack, &c. and plaintiff sued for the money unpaid for the riding and badly using the mare, of which defendant had notice; who, in consideration that plaintiff would write to his attorney to stay the process, promised to pay for the hire, &c. of the mare, and costs incurred, 1. *Brown's Ent.* 20.
- In consideration that the plaintiff, master of the court of wards, would procure a certain suit of defendant then pending to be stayed, defendant promised to assure forty pounds *per annum* on plaintiff for the life of wife of defendant, and to pay him one hundred pounds immediately after the suit should be dismissed, 1. *Brown's Ent.* 51.
- W. indebted to plaintiff, who intended to sue him; defendant, in consideration that he would not sue, promised to pay the fourth part of the debt, and be bound for the residue, 1. *Brown's Ent.* 52.
- Assumpsit* for the debt of another, in consideration of forbearance, *Robinson's Ent.* 100.
- For not accepting a common appearance, where the debt was under ten pounds, 12. *Mod. Intran.* 106.
- Husband of defendant indebted to plaintiff in forty shillings, and plaintiff paid for him twenty-five pounds on a bond, which plaintiff had entered into with him, and gave

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- gave defendant notice; and in consideration that plaintiff would not sue defendant (administratrix of her husband), but would stay two months, defendant promised to pay the sums of money which were due, and which plaintiff paid for the husband, 1. *Brown's Ent.* 53.
- For non-payment of rent, in consideration of a distress relinquished by plaintiff on the premises, *Br. R.* 120. 2. *Infr. Cl.* 120. 122.
- Suit depending in court christian between plaintiff and defendant about the repairs of the chancel of the church, in which sentence was pronounced for defendant; and plaintiff intending to appeal to the court of arches, in consideration that plaintiff would repair the chancel, and would not prosecute his appeal, defendant undertook to pay plaintiff forty shillings, 2. *Brown's Ent.* 4.
- Defendant was indebted to plaintiff in one hundred pounds; and plaintiff intending to sue him, gave him notice; in consideration that he would not sue till his return from G. promised to pay, *Thomp.* 24.
- Plaintiff recovered judgment in C. B. against K. and W. on an agreement; and intending to sue on the judgment, in consideration that plaintiff would not further prosecute, promised to pay on a day certain, with costs of suit, *Hanf.* 33.
- In consideration that plaintiffs would cause the trial at the assizes to be put off, and not permit any further process against defendant, he promised to pay six pounds costs of suit within two weeks, *Hanf.* 51.
- In consideration plaintiff would not prosecute his suit against defendant's son, promised to pay the debt, *Pl. Gen.* 54.
- Against administrator, where intestate was indebted to plaintiff on bond; and intending to take upon him administration, in consideration that plaintiff would not hinder in obtaining letters of administration, and would not sue him for the debt, he promised that plaintiff should not lose one penny of his debt, 1. *Brown's Ent.* 34.
- In consideration that plaintiff would forbear to sue for his part of the goods which descended to him by his father, for his part, defendant promised to pay him thirty pounds, *Robinson's Ent.* 32.
- On an agreement, that if plaintiff would undertake to defendant to maintain a bastard born of plaintiff's daughter, and by one Y. and would not prosecute him, he would pay to plaintiff so much, &c.; on demurrer it was adjudged, that there was no necessary reason to aver that the plaintiff had assumed, &c. by reason of the mutual promises alledged, 1. *Lut.* 222.

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491. Declaration in B. R.; in consideration plaintiff would marry defendant's daughter, he promised to pay him ten pounds; although plaintiff did marry, &c. defendant refused to pay, &c.

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In consideration plaintiff had paid defendant five guineas, defendant promised to pay plaintiff twenty pounds if he married in six months, and one hundred pounds if he ever married, - - - Pl. Aff. 143
Declaration on a special promise relating to money to be given in marriage, 1. Mod. Ent. 128.
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On an agreement between plaintiff and defendant concerning a marriage had between plaintiff's son and defendant's daughter ; in consideration plaintiff promised to perform the agreement on his part, defendant promised to pay money for a marriage portion at several days ; special demurrer, *W's. Entr.* 93.
In consideration that plaintiff had married defendant's daughter, he promised to pay plaintiff six pounds thirteen shillings and fourpence within two years after, 1. *Brown's Ent.* 47.
In consideration that plaintiff would marry A. the acquaintance of defendant, he promised to pay ten pounds towards the expenses of the entertainment, *Brown's Va. Ms.* 9.

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- Against** the brother of a deceased person, who was indebted to plaintiff in forty pounds, to be paid on the day of marriage or death ; and it was agreed between plaintiff and defendant, if plaintiff would prove by a witness on oath, that he would pay ; which plaintiff did, *Read's Dec.* 54.
- In** consideration that plaintiff would marry one of defendant's daughters, he promised to pay plaintiff twenty pounds on the day of marriage, and give plaintiff as much in marriage as he should give with any other of his daughters above the said twenty pounds ; and he afterwards gave one hundred pounds in marriage with one of the other daughters, *Thomp.* 20. *Hanf.* 12.
- In** consideration that plaintiff would consent to take defendant to husband, he promised to take plaintiff to wife, *Thomp.* 22. *Brown's Va. Me.* 67.
- Like** promise by a widow to a widower, 2. *Mod. Entr.* 107.
- Like** by one against *baron* and *feme*, on the *assumpsit* whilst sole ; with the number of the roll, *Vidian.* 12.
- In** consideration that plaintiff would marry defendant's daughter, he promised to pay plaintiff one hundred and twenty pounds, and give her double *vesturam* on the day of marriage, *Robins. Ent.* 39. *Brown's Va. Me.* 41.
- By** husband and wife executrix ; in consideration that testator would marry defendant's cousin and servant, he promised to pay ten pounds, and to give her a heifer and two hogs, 1. *Brownl.* 268.
- In** consideration that plaintiff would marry defendant's servant, he promised to give him forty pounds, and would bear the expences of the entertainment on the day of marriage, and that plaintiff should have *totam oblationem*, *Raft. Ent.* 4.
- In** consideration would expedite a marriage proposed between him and M. the daughter of defendant, a widow, and one L. her late husband, a citizen of London, defendant promised, that if the *peffivo* of said M. by an inventory, should be exhibited under one thousand pounds, then defendant would make it one thousand pounds, *Robins. Ent.* 52.
- In** consideration that plaintiff would marry defendant's daughter, he promised to pay ten marks, *Brownl. Red.* 24. Like to marry defendant's sister, *Ch. Aff.* 271.
- In** consideration that plaintiff would marry defendant's daughter, he promised to pay plaintiff goods and money to the value of one hundred pounds, *Hanf.* 42, 43.
- In** consideration that plaintiff would marry defendant's cousin, promised to pay four hundred pounds, *Robins. Entr.* 105. *Cl. Man.* 145.
- In** consideration that plaintiff would marry testator's niece and servant, he promised that plaintiff should have all his goods at his death (except one hundred pounds which he should give the wife) ; with an averment, that the goods of testator aforesaid due, and said one hundred pounds, amounted to three hundred and eighty pounds, *Wi. Entr.* 351.
- Against** executor ; in consideration plaintiff would marry M. testator promised to pay plaintiff thirty pounds, 1. *Brown. Ent.* 71. *Clift.* 54.
- On** a marriage had between plaintiff and E. ; and in consideration of twelve shillings paid defendant by plaintiff, defendant promised to pay plaintiff ten pounds on the day of marriage, *Brown's Va. Me.* 19.
- Plaintiff**, seised of copyhold, held of several manors, and defendant was seised of a close of copyhold land held of two manors ; and defendant, in consideration that plaintiff would marry defendant's daughter, and that plaintiff would give her an estate for life in all his tenements, promised to surrender said customary lands to plaintiff's use, 3. *Brownl.* 48.
- In** consideration that plaintiff would permit defendant's son to marry plaintiff's daughter, and that plaintiff would surrender customary lands to their use, defendant promised to pay plaintiff ten pounds, *Ashton.* 19.

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- 498. Declaration *in the exchequer of pleas*; in consideration that plaintiff would *assist* defendant, and *write letters* to one E. M. to whom defendant paid his addresses, promised, if he married her, to pay him twenty pounds.
- 499. Declaration in C. B. against defendant, for not paying plaintiff a sum of money offered as a *reward* in a public advertisement for *apprehending* some thieves who had broke into his house.
- 513. Declaration in B. R.; in consideration that plaintiff WOULD CARRY a venture, consisting of shoes, to Jamaica, the defendant *guaranteed* a profit of ten *per cent.*: a loss arose and defendant refuses to pay. (*See Promises to Indemnify, ante.*)
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- action, which had been brought by one A. B. against the plaintiff, and which the defendant, with several other persons, agreed should be defended, and the expences paid in proportion of their shares in a marsh.
28. Declaration in *assumpsit*, for a reward promised by an advertisement for *procuring* defendant's servant, who had absconded with a large sum of money, to be apprehended.
30. Declaration against an executor, for a reward advertised for discovering a servant of his testator, who had robbed his master.
- Declaration for the non-payment of money due to plaintiff as a mariner, and for not supplying him with victuals and drink during his stay on shore to give evidence of the death of certain passengers, who, on the foundering of the ship, were drowned, Mor. Pr. 170
- For non-payment of a guinea a-day, for performing a journey, Ibid. 184
- Declaration on a promise to pay plaintiff a sum of money for procuring stock to be transferred, and another sum for expences and trouble, 1. Mod. Ent. 123
- Declaration in B. R. on a special agreement to pay money, in consideration that plaintiff would destroy old buildings and erect new, Ibid. 183
- Declaration on an agreement to pay plaintiff an annuity during his life, if he should surrender his place of custom-house officer, and procure same for defendant, Pl. Aff. 274
- Count in a declaration in *assumpsit* against an executor to pay plaintiff wages, and leave her an annuity by his will, in consideration of *servi*ng him as a housekeeper, as long as both parties should please, by parol agreement, 3. Burr. 1278
- Declaration for an apothecary's bill, and visiting defendant in his illness, Pl. Aff. 43
- Count for work and labour as an apothecary, Ibid. 44
- Declaration by a surgeon, for curing defendant's wife of a fore leg, and for many attendances and journies, Ibid. 63
- Similar declaration by an apothecary, and a *quantum meruit* thereon, Ibid. 64
- Declaration against an *executrix*, for attending and visiting testator in his illness. 1st Count, work and labour generally. 2d, as a surgeon; *quantum meruit* thereon, Ibid. 65
- Declaration by a *man midwife*, for delivering plaintiff's wife, Mod. Pl. 226
- Declaration in C. B. by *midwife*, for like service done, Ibid. 229
- Declaration by a *farrier*, for his bill for shoeing horses, and curing of disorders, Ibid. 344
- In consideration that plaintiff would procure his wife to levy a fine for better securing of lands, defendant himself undertook to give the wife ten pounds, Rob. Ent. 6.
- In consideration that plaintiff would depasture for defendant ten steers for the space of five weeks, defendant promised to pay plaintiff thirty shillings; and in consideration plaintiff would agift for defendant other steers, so long, &c. defendant promised to pay plaintiff so much, &c. *Hanf.* 37. On an *infimus computasset* for agiftment of sheep, Mod. Ent. 12.

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By executor against the executor of an executor; in consideration that testator would depasture the cattle of defendant's testator in his close called, &c. defendant's testator promised to pay so much, &c.; like promise for hay sold, 1. *Brown's Ent.* 20. Promise to pay for agistment of cattle, *Cl. Man.* 52.

Defendant, on the sale of sheep to plaintiff, then in the custody of E. D. to agist, promised to pay E. D. for agistment, and to acquit plaintiff, which he did not, *Cl. Aff.* 208. *Clift.* 65, 66, 67.

Against executor, where testator, in consideration that plaintiff would cure him of a disease called *bernia*, promised to pay twenty pounds, whereof fifteen pounds was paid, *Brownl. Red.* 35. Like of a disease called the king's evil, *Cl. Man.* 130.

Defendant retained plaintiff, a surgeon, to cure him of a disease called the running of the reins for forty shillings, to be paid on the cure, and defendant refused to use plaisters and medicines provided for him, or to pay plaintiff for the same, *Brownl. Red.* 45.

In consideration that plaintiff would cure defendant's mare of the staggers, defendant promised to pay *quantum*, &c. *Robins. Ent.* 32.

Defendant, pretending that he was a skilful surgeon, for money paid and to be paid, promised to cure plaintiff of a disease in his nose, called *noxi me tangere*, which he did not; but, being unskilful, applied bad medicines, by which his nose became almost corroded and eaten away, *Brownl. Red.* 35. 2. *Instr. Cl.* 194.

Defendant, for money in hand paid, promised to cure plaintiff of the cholic, and defendant gave plaintiff unhealthy medicine, by which plaintiff kept his bed and remained weak for five weeks, *Brown's Va. Me.* 9.

Defendant, for forty pounds, whereof twenty pounds in hand paid, undertook to cure the foot of plaintiff's son; by negligence of defendant he became incurable, *Brownl. Red.* 59. *Cl. Aff.* 259.

Defendant undertook to cure a horse of plaintiff in his foot, who so unskilfully applied the cure that the horse died, *Cl. Aff.* 259.

By husband and wife, where the wife being slightly ill of a cholic, defendant went and unskilfully said that she had three poitumes in her body, and could cure her within ten days, and gave her unhealthy medicines to take, on which the wife, within ten hours, was taken to bed, and there remained in great peril of her life till, &c. *Raft. Ent.* 463.

In consideration that plaintiff would procure W. to be an apprentice for seven years, and permit that W. should serve defendant for the whole time, defendant undertook to give and to pay W. at the end of the term two suits of clothes and twenty shillings, 1. *Brown. Ent.* 11.

In consideration plaintiff would celebrate divine service in a certain chapel for one year, and so from year to year, &c. defendant undertook to pay as much by the year to plaintiff as he had before paid to any other, *Thomp.* 11.

Defendant, rector, retained plaintiff to be a curate for a year at a certain salary; and in consideration that plaintiff, within the year, would relinquish the cure, undertook to pay plaintiff ten pounds, *Robins. Ent.* 70.

Defendant, rector, undertook to pay plaintiff, a clerk, twenty shillings, for the celebration of divine service for two Sundays; and in consideration that plaintiff should serve defendant as curate by the year, and so from year, &c. defendant *assumpsit* to pay plaintiff eighteen pounds *per ann.* *Thomp.* 15.

In consideration that plaintiff would serve defendant as a maid-servant, so long as it should please both, defendant undertook to pay as much as she should deserve, *Thomp.* 25.

Against a hired maid-servant, for not serving according to the intention or agreement, *Clift.* 83.

Plaintiff had put his son as a clerk with defendant, an attorney; son became deaf; defendant, in consideration that plaintiff would take him from defendant's service and would put him to another, undertook, &c. ten pounds, *Robins. Ent.* 78.

Against

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- Against the servant of the bailiff of a liberty, who promised to arrest upon a *latitat*, *Rob. Ent.* 102.
- In consideration that plaintiff would cause son of defendant, his apprentice, to be enrolled before the chamberlain of London, defendant undertook to pay thirteen pounds within one week next after the enrollment, *Hanf.* 14.
- In consideration plaintiff would permit J. an apprentice of plaintiff in the art of a shipwright, to go a voyage with defendant, master of a ship, defendant undertook to pay plaintiff thirty-eight shillings *per* month, and bring him back at the end of the voyage, *Brown's Red.* 41.
- In consideration of five pounds paid defendant for plaintiff with apprentice, defendant undertook to pay plaintiff said five pounds if apprentice died within one year, *Hanf.* 21.
- In consideration of ten pounds paid to defendant by plaintiff, defendant undertook to find J. the son of plaintiff, for seven years, convenient meat, drink, and clothes, and instruct J. within the term in the art of a haberdasher, *Brown's Va. Me.* 7.
- Plaintiff retained defendant in the art of an apothecary, who falsified a bill in his book, and delivered a false bill; went out at night, and expended and wasted the money and goods of plaintiff inordinately in taverns, *Vidian.* 82.
- In consideration of sixpence paid, and three shillings and fourpence to be paid weekly, defendant undertook to serve plaintiff for one year, *Pl. Gen.* 52.
- Against an executor; in consideration that plaintiff should serve testator, he undertook to adopt plaintiff, and to treat him as a son, and to provide for him amply, 1. *Saund.* 264.
- Assumpsit* by apprentice to give master forty shillings to discharge him from part of his service, and did not pay, &c. *Cl. Man.* 128.
- In consideration that plaintiff would take back his son out of defendant's service, to whom he was an apprentice, defendant promised to pay plaintiff eight pounds, *Read's Dec.* 63.
- In consideration plaintiff would serve defendant in his business as long as it should please both, defendant promised him a salary of five shillings weekly, &c.; *quantum meruit*, *indbitatus assumpsit*, and *in simul compulasset*, *Clift.* 81.
- Against administrator, by keeper of a warren; *quantum meruit* for work done in the occupation and business of warrener, and *indebitatus assumpsit*, *Clift.* 82.
- Plaintiff retained defendant as a shepherd for a year; and in consideration that plaintiff promised to pay defendant three pounds wages, defendant promised to serve for a year, and departed within the term, 1. *Brownl.* 230.
- Against an attorney, who, in consideration that plaintiff would give him a warrant of attorney, undertook to procure plaintiff's discharge, and withdraw the *latitat* on which he was in custody, *Thomp. Ent.* 21.
- Against an attorney, who undertook to deliver to plaintiff *fi. fa.* upon a warrant of attorney acknowledged for judgment by the debtor, and defendant did not do, *Read's Dec.* 33.
- Against an under-sheriff, where a *ca. fa.* had issued, and plaintiff taken and in defendant's custody for twenty-nine pounds twelve shillings; on which, in consideration that plaintiff would pay the said twenty-nine pounds twelve shillings to defendant, he promised to discharge plaintiff out of prison, and to repay the money to the plaintiff upon his discharging the writ, *Read's Dec.* 25.
- For not performing an agreement to clean out the yard of a house, called the Mews, and to carry away the filth and dung, *Read's Dec.* 11.
- Against defendant, for not mending a clock according to agreement, upon the exchange of clocks, *Clift.* 74.
- Against a servant, for not serving according to agreement, *Ib.* 83.
- Defendant being retained to go to parts beyond the seas as a soldier, in consideration that plaintiff would procure him to be released, defendant undertook to pay plaintiff eight pounds, 1. *Brown's Ent.* 10.

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In consideration that plaintiff would go to S. and there would attend and be prepared to go in the place and with defendant's arms into Scotland, defendant undertook to pay plaintiff one hundred pounds, 1. *Brown's Ent.* 25.

In consideration that plaintiff, a baker, would give defendant, a miller, double toll for grinding corn, defendant undertook to carry plaintiff's corn from a certain market-town, within fourteen miles from the mill, to the mill; and in consideration that plaintiff would discharge defendant from his promise, and would carry his own grain to the mill, defendant undertook to pay plaintiff ten pounds, 1. *Brown's Ent.* 81.

By administrator *cum testamento annexo*; in consideration that testator would provide for defendant divers clothes, and materials thereto belonging, defendant undertook to pay, &c. on request, 2. *Sundl.* 271.

For salary as maker of a ship; and *quantum meruit*, *Clift.* 911, 912.

In consideration that plaintiff would lend defendant a gelding to ride, defendant undertook to pay twelve pence per day, *Robins. Ent.* 14.

In consideration that plaintiff would let defendant a gelding, with saddle and bridle, &c. for a journey of seven days, defendant paid plaintiff fourteen shillings, and undertook to pay plaintiff two shillings for every day beyond seven days, and redeliver to plaintiff the gelding sound, or pay six pounds; and defendant, after his return, at the end of eight days, did not pay sixteen shillings, or redeliver, *Brownl. Red.* 32.

In consideration that plaintiff would procure defendant to be tenant of an inn, defendant undertook to pay plaintiff five pounds, *Robins. Ent.* 69.

In consideration that plaintiff would go to the master of the rolls, and shew the authority which he had to discharge a recognizance in chancery, defendant undertook to pay plaintiff five pounds, or give him a gelding before a day certain, *Robins. Ent.* 31.

Plaintiff, at the request of defendant, endeavoured to procure a pardon for homicide committed by defendant; and in consideration defendant promised, &c. one hundred pounds, *Robins. Ent.* 74.

Plaintiff by his industry, obtained the king's pardon for defendant's son and one S., indicted for a felony, and demanded for obtaining the pardon forty-two pounds; in consideration whereof defendant promised, that if S. did not pay plaintiff said forty-two pounds within one year he would, *Brownl. Red.* 28.

In consideration that plaintiff would obtain for defendant the office of queen's gun-maker, defendant promised to pay him twenty pounds, *Robins. Ent.* 74. 101.

In consideration that plaintiff would procure workmen to cut cord-wood, defendant promised to pay what he should demand for labour and wages of labourers; and *quantum meruit*, *Hanf.* 18.

Defendant arrested R. at the suit of plaintiff in debt; and in consideration of twenty pounds paid him by plaintiff, defendant promised to have the party arrested before the justices in the following term, or pay the debt, *Robins. Ent.* 104.

Plaintiff delivered to defendant, deputy-sheriff, *capias utlagarum*; and defendant, in consideration of forty shillings, promised to arrest the party before the day, and have him in court on the day of the return of the writ, or pay forty shillings; defendant arrested the party, but had not the body, &c. *Brownl. Red.* 43.

In consideration that plaintiff would procure one E. a shy person in London, to be arrested at plaintiff's suit, defendant promised to pay plaintiff ten pounds in hand, and six pounds on request, *Id.* 40.

Defendant advertised a felony; and in consideration that plaintiff, or any other person, would inform of the goods, so that goods might be restored, promised to pay to such person who should inform twenty pounds, *Brown's Meth.* 6.

Indebitatus assumptit by plaitlerer, and for materials found, and *quantum meruit*, *Modus Intae.* 3. *Quantum meruit* for the repairs of a house, *Read's Dec.* 20.

Assumptit

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- Assumpsit* for bricklayer's work, 2. *Modus Intran.* 37. For building houses, and materials, *Ib.* 38.
- Upon a promise to pay forty pounds to the plaintiff for helping the defendant to a wife, *Ib.* 55. Against a partner of a ship, for repairs, master's salary, *Ib.* 56. For not paying for instructing a child music, *Robinsf. Entr.* 13.
- By an administrator against an administrator, on several promises touching the ploughing and culture of land by plaintiff's intestate for defendant's intestate, *Clift.* 51.
- In consideration plaintiff would pull up underwood and mend the ditch, defendant undertook to pay and deliver plaintiff the *buscam* arising therefrom, *Ib.* 86.
- In consideration that plaintiff, a carrier, would carry wares in his boats of such weight, defendant promised, &c. *quantum valeret*, *Horns.* 75.
- Against executor, where testator, in consideration that plaintiff, a carver in wood, would do the business of testator by the week, promised to pay plaintiff three shillings and eightpence every week, 3. *Brownl.* 87.
- Plaintiff was taken on a *cap. utl.*; and defendant, in consideration of twenty-two lings, promised to discharge him within three or four days, *Horns.* 205.
- Against a sheriff's officer, who arrested plaintiff's debtor by a warrant on a *ca. utl.* and in consideration of eight shillings paid and to be paid, promised to take the prisoner to gaol, but he suffered him to escape, 3. *Brownl.* 85.
- Defendant for money, part whereof was paid, promised to make three carriages, *F. N. Br.* 94.
- By an attorney of C. B.; in consideration that plaintiff would solicit for defendant a suit in B. R. he promised to pay plaintiff as much, &c. and for costs and expences laid out, 2. *Brown's Ent.* 8. *Brown's Va. Me.* 58.
- By executor of an attorney; in consideration that plaintiff would be the attorney and solicitor for defendant, and prosecute, he had defended and solicited divers suits, and had laid out money for defendant about the same, defendant promised to pay money laid out and fees of the terms, *Wi. Entr.* 51. 2. *Infr. Cl.* 157.
- By an attorney of B. R.; in consideration that plaintiff would sue out a writ of error for defendant in B. R. he promised to pay plaintiff so much as he should ask about the prosecution, likewise as much as plaintiff should deserve for prosecuting the suit, *Thomp.* 17.
- Like *assumpsit* for an attorney retained to defend and prosecute several suits for defendant, *Robinsf. Entr.* 28. *Quantum meruit* by solicitor, *Read's Dec.* 5.
- By an attorney, where, in consideration that plaintiff, as attorney of A. B. would not sue, defendant promised all fees due to plaintiff for his suit against defendant, *Cl. Aff.* 192.
- In consideration that plaintiff would be the attorney of one C. to sue out a writ of covenant for a *fine dedimus potestatem*, and fine thereupon, defendant promised to pay money laid out, and three shillings and fourpence for every term fee, *Meile.* 65.
- In consideration that plaintiff, solicitor for defendant and his brother in chancery, would procure a bill to be exhibited, and a *subpœna*, defendant promised to pay the fees of the term and expences. Like of a suit in the court of arches, and in prerogative court, *Robinsf. Ent.* 11.
- In consideration that plaintiff would retain an attorney to appear for defendant in chancery, and would defend the cause, defendant promised to pay three shillings and fourpence every term for fees and expences, *Robinsf. Ent.* 78, 79.
- In consideration that plaintiff would sue out a writ to remove defendant's action out of the borough court, and *subpœna* out of chancery, and exhibit a bill and prosecute the suit, promised to pay, *Robinsf. Ent.* 55.
- By the clerk of the prothonotary; in consideration that plaintiff would exemplify a judgment on verdict, he promised to pay the money laid out, and for the work and labour, *Brown's Va. Me.* 58.

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- Like *assumpsit*** ; in consideration that plaintiff would draw a declaration in covenant for defendant, he promised *quantum meruit*, *Brownl. Red.* 14.
- In consideration** that plaintiff would sue out a writ of *subpœna* out of chancery, defendant promised to pay him the money laid out, and three shillings and fourpence for labour ; and in consideration that the plaintiff would draw and exhibit a bill for defendant in chancery, and would solicit the cause there, defendant promised to pay plaintiff three shillings and fourpence for every term beyond the money laid out, *Brownl. Red.* 26.
- In consideration** that plaintiff, being a clerk of the upper bench, would file bail for one A. B. defendant promised to pay the money laid out for fees ; and in consideration that plaintiff would sue out a *latitat* for R. against W. defendant promised to pay plaintiff five shillings and one penny for the same, *Brownl. Red.* 31.
- By administrator** against executor ; in consideration that intestate, being an attorney of C. B. would sue out an original writ out of chancery for I. against M. the testator promised to pay as well the money laid out as the money for fees ; and three other like *assumpsits*, *Brown's Meth.* 9.
- By an attorney** for fees and soliciting, to pay all such sums as he had expended, *Lev. Ent.* 23. 2. *Mod. Intr.* 57.
- By the clerk** of the clerks of the crown, for fees, *Read's Dec.* 34.

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- 100.** Declaration for *not making application* to mortgagee of certain premises, who had brought an action and ejectment in the exchequer, to permit plaintiff to remain in possession according to promise, whereby, &c. special damage : plaintiff in the action recovered, and execution was sued out, &c. ; and for deceiving plaintiff by representing that the mortgagee or his agent would permit plaintiff, &c. (See *Assumpsit* relating to Lands, &c.)
- 528.** Declaration in B. R. on a special agreement made between plaintiffs, who were owners of certain oyster-grounds in the isle of Sheppey, and defendant, that defendant should dredge and pick the oysters in their oyster-ground during the season, for certain wages, and that he should not depart from his work without leave, against defendant, for departing before the end of the season without leave.
- 318.** Declaration at the suit of an attorney, for the plaintiff in the original action, against the defendant in such action, for the costs of suit, which defendant promised to pay the present plaintiff in case he would cause plaintiff in the original action to compromise the suit.
- 327.** Declaration by an attorney ; in consideration he would bring a cause in chancery on to a bearing, defendant promised to pay his charges on a day certain.

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384. Declaration in B. R. by the company of Brewers in London against defendant, a *surveyor*, for not surveying an estate belonging to the company, and making a plan thereof according to his promise, and for which they had paid him in part a large sum of money. (*See Assumpsit against Architects, &c. ante.*)
388. Declaration in B. R. on a special agreement; plaintiff had been retained as a *plasterer* to do some business within a certain space of time; he employed defendant to do a part of such business within a certain time; defendant began, but refused to finish; *per quod* plaintiff was obliged to employ others at a much greater expence. (*See Architects, Builders, &c. ante.*)
500. Declaration by plaintiff against defendant, both *purfers* of men of war, who agreed to exchange their situations with each other, on condition that defendant should pay plaintiff a sum of money if the ship which plaintiff was to give up in favour of defendant should be in commission for a certain space of time, with a proviso, that if the ship which defendant was to quit to plaintiff should remain also in commission the agreement was then to be void: the ship which plaintiff quitted remained in commission, and defendant's ship laid up in ordinary; defendant paid part of the money, but refuses to discharge the balance.
502. Declaration in B. R.; in consideration plaintiff would deliver some cattle (which he had bought) that were distrained on the tenants of defendant to the tenants again, defendant promised to pay for the same, and allow for one which died in plaintiff's possession. Several Counts.
504. Declaration in B. R. on a promise to pay plaintiff, a SURGEON, if he would go on with the care of a poor boy who had fallen under the wheels of a waggon.
508. Declaration by curate against his rector, who promised plaintiff if he would enter into holy orders he would make him curate of the church of which he was rector; plaintiff entered into holy orders, and was curate for a short time, when defendant turned him out, &c. Special damage.
522. Declaration against an AGENT to insure, who had insured plaintiff's interest in a ship upon less beneficial terms than he ought and might have done, by insuring one thousand pounds; and although defendant knew that the fleet from Jamaica was to sail with convoy, he only insured one hundred pounds at fifteen pounds fifteen shillings premium, and the remainder at twenty-six pounds five shillings, ten pounds of which to be returned if the ship sailed with convoy and arrived. 2d Count, for not insuring at Mall Bay in Ireland for what had been uninsured, unless to the amount of one thousand five hundred

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pounds, which was not sufficient to cover the amount of plaintiff's interest, which was two thousand seven hundred pounds, whereby plaintiff lost his indemnity as to the remainder. 3d Count, stating loss of indemnity for the remaining two thousand six hundred pounds, and the one hundred pounds first insured deducted. (*See Negligence, &c.*)

534. Declaration against a *broker*, for not entering goods at the custom-house for exportation, though he had charged plaintiffs with the duty, whereby they were seized. Several Counts. (*See Negligence, &c.*)

540. Declaration in the palace court, at the suit of a sheriff's officer, on special *assumpsit*; in consideration plaintiff would use more than ordinary endeavours to arrest a third person at defendant's suit, he promised to pay him five guineas; plaintiff did arrest, but defendant refused, &c.; with opinion and cases whether the consideration be legal.

542. Declaration; in consideration plaintiff would deliver up to P. certain writings, &c. belonging to P. which plaintiff detained as a *security* for a debt due to him from plaintiff, defendant undertook to see him paid.

543. Declaration; in consideration plaintiff would deliver up to P. certain writings, &c. belonging to P. which plaintiff detained as a *security* for a debt due to him from plaintiff, defendant undertook to see him paid. (*See Respecting Securities, post.*)

546. Declaration by original against *executor*; in consideration that plaintiff had lent defendant's testator seventy pounds; testator promised to make a mortgage to plaintiff, or pay him the money, but did neither. (*See Respecting Securities, post.*)

Declaration; in consideration plaintiff (an *attorney* of B. R.) would procure J. S. to purchase defendant's place of secondary of the Poultry Compter in London, defendant promised to pay plaintiff one hundred pounds,

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Declaration; in consideration plaintiff would bring a cause in chancery to a hearing, defendant promised plaintiff to pay all his charges at a day certain, *S. P. Pl. Aff.* 130.

Ibid. 203

For not building for plaintiff an house in a substantial and workmanlike manner, but on the contrary building the same in a slight and unworkmanlike manner, contrary to agreement,

Ibid. 188

Plaintiff bought a chariot of defendant, who promised to keep it in repair twelve months, but did not,

Ibid. 204

Declaration by an *attorney* against a limner, for not drawing plaintiff's picture like him, according to his undertaking,

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3. Ld. Raym. 163. N. Ed.

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1. Mod. Ent. 170
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<i>Assumpsit</i> to pay plaintiff two pounds <i>per cent.</i> to procure a purchaser of the plaintiff's place of surveyor of the baggage of the port of London. (This is a bad consideration, and contrary to the statute against the sale of offices,) -	1. Will. Rep. 133. b. 1. Mod. Est. 186
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- 505. Declaration in the county of the city of Norwich against a *servant*, for leaving his place before the expiration of the time for which plaintiff hired him, and without giving plaintiff warning. 2d Count,
- 506. quitting without warning. 3d Count, on the re-
507. tainer as a yearly servant, quitting, &c.
- 507. Declaration in C. B. ; in consideration plaintiff had paid forty pounds with her son, as an apprentice (clerk), assigned over by another MASTER (an *attorney*) to defendant (an *attorney*), he promised to *return her* twenty pounds of the money in case her son did not stay with him three years; plaintiff's son did not stay, and defendant refused, &c. (*See Assumpsit to Repay Money, post.* and against *Attornies, ante.*)
- 510. Declaration on articles of agreement; defendant undertook to serve plaintiff for a limited time, and not to enter into the service of another person: breaches,
- 511. 1st, that he quitted plaintiff's service; 2d, *on the statute*, that he worked for another person. (*See Action on Statutes Assumpsit.*)
- 512. Declaration *in the court of record, Whitechapel*, on a special agreement; defendant hired in the coal and scavenger business for a month certain quitted before, whereby plaintiff lost the use of his carts and horses. Special damage.
- 516. Declaration in the exchequer, on an agreement to *work grindstones* at plaintiff's quarries for a year certain; defendants deserted their work before the expiration of the term, whereby plaintiff had several grindstones left on his hands, and lost the freight thereof in a ship he had retained to transport them.
- 528. Declaration in B. R. on a special agreement made between plaintiffs, who were owners of certain oyster-grounds in the isle of Sheppey, and defendant, that defendant should dredge and pick the oysters in their oyster-grounds during the season, for certain wages,

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and that he should not depart from his work without leave, against defendant, for departing before the end of the season without leave.

533. Declaration; in consideration of plaintiff's entering into defendant's service and going abroad, defendant undertook, in case he discharged her abroad, to pay her passage back.

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26. Declaration by master against his journeyman, for so carelessly making one hundred coombs of barley into malt that he spoiled the same.

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1. Mod. Ent. 116

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261. Declaration by original, payee against drawer, owner of two ships; plaintiff had furnished one of the sailors *necessaries*, for which the sailor had given a draft on defendant on account of the wages that might become due in case he should go in the *Attempt* or *Audacious*.

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65. 68. For *necessaries, &c.* found.

In consideration that plaintiff would permit I. to be his guest until a certain day, defendant undertook to pay plaintiff eight pounds, 1. *Brown's Ent.* 68. *Quantum meruit* for the same, *Brown's Va. Me.* 8.

In consideration that plaintiff would procure the illegitimate child of defendant to be dieted and nursed, defendant promised to pay so much, &c.; and in consideration that plaintiff had procured, &c. to be nursed for the space of one hundred and twelve weeks, at two shillings *per week* weekly, amounting to eleven pounds four shillings, defendant promised to pay the money, &c. 1. *Brown.* 82.

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- In consideration that plaintiff would find sufficient meat, drink, washing, and lodging, for four children of defendant and a maid-servant, and would procure two of them to be instructed, promised to pay plaintiff *quantum valeret*, and what plaintiff should demand for the education of the children, *Tbomp. 11. Cl. Man. 62.* For drink, and business done, *Cl. Man. 89.* For meat, *Ib. 130.*
- In consideration that plaintiff would undertake the care and tuition of defendant's son as his tutor in college, and should demand ninety-one pounds, defendant promised to pay as well the money demanded as so much for tuition as he should deserve, *Vidian, 12.*
- In consideration that plaintiff would receive into his house defendant's son, and instruct him in music, and would find him necessaries, promised to pay plaintiff for the keeping and learning of son, and for necessaries, *Robins. Ent. 13.*
- Against husband and wife; in consideration that plaintiff would receive into his house the wife whilst sole, and would find her meat, drink, and bed, she promised to pay plaintiff *quantum valeret*, *Brownl. Red. 29.*
- In consideration that plaintiff would provide for defendant, then sheriff of the county of G. meat, drink, wine, and other necessaries, at the time of the assizes, defendant promised to pay for the same as much as W. paid when he was sheriff, *Hansf. 49.*
- In consideration that plaintiff in his house would provide meat, drink, bedding, and fire, for such persons as defendant should bring, he promised to pay every day for meat and drink sixpence, for bed one penny, and fire eightpence, *3. Brownl. 54.*
- Plaintiff was keeper of the prison of the county of B. and had the custody of the prisoners; and defendant being a prisoner there, in consideration that plaintiff would provide sufficient meat, drink, and bedding for defendant, he undertook to pay plaintiff so much, &c. *1. Brown's Ent. 10.*
- In consideration that plaintiff, keeper of the Gate-House Prison, would find defendant sufficient meat, drink, and bedding, whilst he should be a prisoner there, defendant undertook to pay plaintiff twenty-one shillings weekly, *viz.* twelve-pence for dinner and supper, and twelvepence for bed every night, *Brownl. Red. 30.*
- By executor; testator, at defendant's request, received the son of S. and defendant's cousin, to be a guest with testator till, &c. and thereupon twelve pounds became due to testator; in consideration whereof defendant promised to pay on request, if S. did not on a day certain, *Mod. Int. 8. Cl. Man. 133.*
- By administrator against a student in the university of Oxford, for meat and drink found, &c. by the intestate and defendant, *Clift. 49.*
- By *obsonatore* of a college against the father of a student, for meat and drink found for the son, *Ib. 59.*
- In consideration that plaintiff would receive into his inn in London two geldings of defendant, to be kept in the stable with hay, oats, and other necessaries, defendant promised to pay *quantum valeret*; one gelding was kept there for eighteen days, and the other one hundred and twenty, *3. Brownl. 47.*

6. IN DEFAULT OF A THIRD PERSON. (See Forbearance and Services done, *ante.*) (36)

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121. Declaration by original; in consideration that plaintiff, who had sold goods to a third person, would allow five per cent. defendant would pay for them: breach,

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- that though plaintiff was ready to allow, defendant would not pay.
410. Declaration in *the palace court* against defendant, who, in consideration plaintiff *would not enter up judgment* on a warrant of attorney against one A. B. who had made default in paying the money, promised to pay, or render the body. (*See Forbearance, ante.*)
429. Declaration in B. R.; in consideration that plaintiff would forbear to distrain the goods of J. S. his tenant, for rent arrear, defendant, who had cattle on the premises which he was about to sell, undertook to pay the rent then due, and what should become due at Midsummer. 2d Count, stating J. S. to be tenant for a year and a half, at thirty-two pounds ten shillings, and that forty-eight pounds fifteen shillings, was due for one year and half rent. 3d Count, that plaintiff intended to distrain by his two bailiffs, naming them. (*See Forbearance, and Landlord and Tenant, ante.*)
427. Declaration in B. R. on a promise in writing (which was a promissory note not negotiable) *to pay the debt of another*, in consideration of forbearance generally in the 1st Count. 2d, on forbearance for a month; with an opinion as to declaring on such a promise, to take it out of the statute. (*See Forbearance, ante.*)
423. Declaration by original; in consideration that plaintiff would forbear to issue an attachment, pursuant to a rule obtained on the master's allocatur in the original cause, to set aside the interlocutory judgment for irregularity, the defendants undertook. 2d Count, stating, that defendants had paid him five guineas in part payment, and in consideration of forbearance to issue the attachment for the remainder undertook, &c.
425. 3d Count, in consideration, &c. would pay the remainder of the costs the latter end of the week. (*See Forbearance, ante.*)
433. Declaration in B. R.; in consideration plaintiff would permit defendant to take a bill of sale from a third person of his goods and effects, *which had been taken in execution* at plaintiff's suit. he undertook to pay the debt and interest, provided no extent issued at the suit of the crown for three months, and a sufficiency was left in his hands to satisfy the debt.
555. Declaration in B. R. on several promises made by defendant to plaintiff, that if plaintiff would supply him with goods he would pay for them.
314. Declaration in B. R. on a promise by defendant to see plaintiff paid for business done for another as a solicitor and attorney. 2d Count, on the retainer.
575. Declaration in B. R. by surviving partners, in writing, to pay the debt of another. A variety of Counts,

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- Declaration ; in consideration plaintiff would continue to board a *third person*, who then owed plaintiff sixty shillings, defendant promised to pay the sixty shillings, and any other sum that should become due for board, not exceeding ten pounds, Pl. Aff. 139
- In consideration that plaintiff would demise a messuage to a *third person*, defendant promised to see the rent paid ; and though the third person paid part, defendant refused to pay the remainder, *Ibid.* 139
- Declaration in the exchequer ; defendant was agent to a company, and gave a note to plaintiff to entitle him to thirty-four shillings from the said company, who gave the note to the plaintiff for a debt he owed her ; and defendant promised plaintiff if she would keep the note till such a time, he would exchange it for money. 2d Count, on a promise to cash the note, &c. if plaintiff should then have the custody of it, *Ibid.* 133
- In consideration plaintiff would bring the cause of a third person to a hearing in chancery, defendant promised to pay him all charges before such a day. 2d Count, on a promissory note, *Ibid.* 138
- In consideration plaintiff would board a *third person* that owed three pounds, defendant promised to pay that debt, and for board as far as ten pounds, *S. P. Pl. Aff.* 139, Mor. Pr. 215
- By an *attorney* of the common pleas, who prosecuted a bill in chancery as a solicitor for defendant's brother ; and in consideration that plaintiff would procure a writ of *latitat* for defendant against T. defendant promised to pay the money laid out, and fees due in his brother's suit, within ten days following ; demurrer, *Wi. Entr.* 30.
- Against an executor, where testator undertook to pay plaintiff money for merchandizes by him sold to a stranger at the request of a *third person*, *Robinsf. Ent.* 27.
- R. the son of defendant, being indebted to plaintiff, and plaintiff paid for R. twenty pounds, part of the debt on bond in which plaintiff was bound with R. ; and in consideration that plaintiff would shew to defendant the said bond, he undertook to pay certain sums of money which R. then owed, on request, 1. *Brown. Ent.* 13.
- In consideration that plaintiff would lend J. and A. twenty pounds for six months, defendant undertook to pay them with interest, on request, at the end of six months, if J. and A. did not, 1. *Brown. Ent.* 31.
- In consideration that plaintiff had sold to E. the daughter of defendant, divers goods at certain prices, and had demanded the money from her, defendant undertook to pay on request, 1. *Brown. Ent.* 47.
- Like consideration for clothes sold to son of defendant, at his request, *Mod. Intran.* 22.
- Assumpsit* against defendant for the debt of another, in consideration that plaintiff would sell to the other a woollen cloth, and would give him time to pay, *Robinsf. Ent.* 101.
- In consideration that plaintiff would trust a third person for a bed, &c. defendant promised to pay if the other did not, *Clift.* 59.
- J. the brother of defendant, was indebted to plaintiff in thirty shillings ; and in consideration plaintiff would lend J. sixty shillings, and for three shillings in hand paid by plaintiff, defendant undertook to pay money on request, if J. did not on a day certain, 1. *Brown. Ent.* 31.

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- Plaintiff, at the request of defendant, sold J. one hundred and sixty sheep for sixty-two pounds, to be paid on a day certain, in consideration whereof defendant undertook to pay money on request, after the day, if J. did not pay at the day, *Thomp. 19.*
- E. the son of defendant, was indebted to plaintiff in two hundred pounds; and in consideration that plaintiff would lend defendant two hundred pounds for three months, defendant undertook to pay plaintiff two hundred marks every year for three years, in satisfaction of two hundred pounds which the son owed plaintiff, *Robins. Ent. 104.*
- Defendant's father was indebted to plaintiff in thirty-one pounds on bond; in consideration that plaintiff had given defendant a sugar-loaf, he undertook to pay plaintiff the whole debt of his father, *Hanf. 46.* Like by the father for the son, *Brown's Va. Me. 5.*
- In consideration plaintiff, at the instance of defendant, would sell G. wares to the value of twenty pounds, to be paid at a certain day, defendant undertook to pay the money for G. at the day, if G. did not pay for them, *Pl. Gen. 27.*
- Plaintiff was bound for defendant in a bond for payment of thirty-four pounds at a day certain; in consideration plaintiff would pay the money at the day, defendant undertook to pay as well the money on the bond as the debt which the father of the defendant owed plaintiff, *Pl. Gen. 65.*
- Plaintiff sold D. four oxen for thirty-two pounds, to be paid on the delivery of them, whereof part was paid; defendant, in consideration that plaintiff would deliver D. the oxen, undertook to pay in two days, *Robins. Ent. 8.*
- E. the son of defendant, and one S. were indebted for obtaining a pardon of the king for a felony committed by them; in consideration whereof, defendant undertook to pay plaintiff forty-two pounds, if S. did not pay the same within one year, *Brownl. Red. 28.*
- In consideration that plaintiff would procure W. a relation of defendant, to be discharged from prison, defendant undertook to pay plaintiff such sum as he should lay out about it, *Brown's Va. Me. 6.*
- In consideration plaintiff would discharge W. H. who was arrested at the suit of plaintiff, out of the custody of the sheriff, defendant undertook to pay the debt, *Read's Dec. 55. Brownl. Red. 87.*
- In consideration that the plaintiff would sell to the mother of defendant ten casks *cados cervissi lupulat.* defendant undertook, &c. *Mo. Intran. 19.*
- In consideration plaintiff would lend one H. one hundred shillings for three months, defendant undertook that he, with said H. and T. should be bound to plaintiff in ten pounds for the payment, *Brown's Va. Me. 3.*
- Plaintiff sub-collector of revenue arising from *focos ignitos* and *estuaria*, and divers persons, being in arrear in W. of which defendant was constable, and then assisting plaintiff in the collection of the said arrears, in consideration plaintiff would forbear from making a distress on divers persons then in arrear, defendant undertook to pay such arrears at the next sessions of the peace, *Brown's Va. Me. 14.*
- Against defendant, the brother of a person deceased, who was indebted to plaintiff in forty pounds, to be paid on the day of marriage or death; and defendant promised to pay, if defendant could prove the debt aforesaid on oath, *Read's Dec. 54.*
- Defendant being a creditor of G. J. and L. G. they promised to pay plaintiff's debt, in consideration of withdrawing his action against G. J. and L. G. out of the court of admiralty, *Cl. Aff. 184.*
- Assumpsit* by the son, on the undertaking of defendant's wife, on delivery of divers goods for the mother to plaintiff, to be paid to the sons in proportions when of age, *Cl. Aff. 259.*
- For money lent to a third person, to be paid at a day certain, 2. *Mod. Intran. 43.*
- J. was indebted to plaintiff in sixty pounds for wine sold, and because he was not punctual in his payment plaintiff refused to sell him more wine; defendant, in consideration

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- consideration that plaintiff would sell more wine to J. at a price to be agreed upon, promised that plaintiff should not lose by it one penny, 3. *Brownl.* 57.
- E. was bound to plaintiff in eighty pounds; and in consideration that plaintiff would accept twenty-one pounds in satisfaction thereof, defendant promised to pay, &c. 3. *Brownl.* 77.
- W. was indebted to plaintiff in account; and in consideration that plaintiff would discharge him therefrom, defendant undertook to pay, &c. *Wilk.* 279.
- Plaintiff, at defendant's request, demised house and furniture to one C.; and defendant in consideration thereof, promised to pay rent if in arrear, *Raft. Ent.* 551.
- In consideration that plaintiff would sell to the brother of defendant wool for ten pounds, defendant promised to pay, *Herne*, 164.
- Against executor, where testator promised to pay plaintiff six pounds for wares by him sold to a stranger, 9. *Co.* 89.
- In consideration that plaintiff would permit J. then in custody at plaintiff's suit, to go at large, defendant undertook that he should be forthcoming on a certain day, or that he would pay the debt and costs, 1. *Bro.* 16.
- Against the *bailiff of a liberty* who arrested a person, and for a certain consideration undertook that he should appear at the day, or he would pay the debt, *Rob. Ent.* 104.
- Action on stat. 23. Car. 2. made to prevent trivial and vexatious suits, *Brownl. Fa. Ms.* 48.
- Defendant was arrested at plaintiff's suit, and promised to pay law charges, and give plaintiff a load of hay, 2. *Mod Intrin.* 63.
- Defendant promised to pay plaintiff a debt due to him for rent of a mill by S. in consideration plaintiff would forbear to sue S. *Brownl. Red.* 87.
- Assumpsit* to pay the debt, is plaintiff would discharge one T. S. out of prison, *Brownl. Red.* 87.
- By executor against executor, on promise made by testator; defendant promised, in consideration plaintiff would forbear to sue, to pay the debt, *Brownl. Red.* 88.
- In consideration that plaintiff's executor would not pals the record of *nisi prius* for the debt to be tried, and agree to deliver to defendant all writings and bills made to testator, and give defendant a general release, defendant undertook to pay in two days, 3. *Brownl.* 92.
- Plaintiff being seised of a vicarage donative gave it to defendant, a clerk, whom he afterwards, for several trespasses, procured to be arrested on a *latitat*; and defendant, in consideration that plaintiff would forbear from some suits, promised to surrender the vicarage at a certain day, *Herne*, 146.
- Forbearance of suit, for a debt sued for before day of payment thereof, ordered by arbitrators, *Reg.* 111.
- Assumpsit* against H. and J. his wife, of former husband, who died indebted to plaintiff and intestate, being possessed of an interest in a term in reversion after his death, and administration was committed to defendant; J. in consideration that plaintiff would forbear to sue, promised to pay sixty pounds within four years when the term should come into his hands, *Herne*, 69.
- Plaintiff intending to sue defendant, executor, for *legacy* unpaid, defendant, in consideration that plaintiff would forbear to sue, and would accept security for the payment of eight pounds for interest and five pounds borrowed, promised to pay the legacy on a day certain, *Herne*, 79.
- One was indebted to plaintiff for goods bought; and by a private act of parliament it was enacted, that defendant should be charged with his debts, and lands were sold by commissioners in failure of payment; defendant, in consideration that plaintiff would not prove the debt before commissioners, but would forbear for a short time, promised to pay on request, *Co. Ent.* 4.
- Plaintiff demised to R. a house, and distrained the goods in the shop for rent arrear; defendant claimed the wares by an extent; and in consideration that plaintiff would permit

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permit the wares distrained to remain on the premises till a certain hour, then to be appraised by indifferent persons, he promised that he should be satisfied, or the goods returned, but before appraisement they were carried off, 3. *Browal*. 57.

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101. Declaration in the *palace court* on a *wager*, whether A. had become bail for B. in a cause then depending in the *marshalsea court*; plea; verdict for plaintiff.
102. Declaration in B. R. by the survivor of two against the administrator of the other in *assumpsit*, upon a *wager* of one thousand pounds who should live the longer.
103. 2d Count, on a promise that the *executors* of the person dying first should pay the survivor; with the solicitor general's opinion, and cases on wagers; pleas thereto; *non assumpsit* by testator. 2d, *Plene administravit* by administrator. 3d, *Plene administravit prater*, several bond debts to defendant's self and others due to defendant on simple contract, and five pounds assets, which is insufficient to satisfy them;
104. 105. with opinions on the manner of pleading superior debts.
107. General *indebitatus assumpsit* in B. R. by winner against loser at a game called *pitch-halfpenny*, for nine pounds nineteen shillings and sixpence, the original sum lost being sixteen pounds and upwards, 9. *Ann.*
108. c. 14. s. 2.; with opinion and cases on money lost at play.
108. *Assumpsit* in B. R. on a *wager* of five guineas, that one S. T. had before a certain time bought a waggon, and one shilling deposited, 3. *Term. Rep.* 693. *Good v. Elliott*.
110. Declaration in B. R. on a *wager* on a cock match; with opinion and case thereon.
111. Declaration in B. R. on a *wager* on a horse-race at Newmarket of four hundred guineas to two hundred pounds, if the horses T. and P. should not be ready to run on a certain day, and win against two other horses M. and M.; with opinion thereon.
113. Declaration in *assumpsit* in B. R. on an agreement to make stakes good on a *wager* concerning the trotting of a horse a certain space, to carry a certain weight, or forfeit eight guineas.
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118. Declaration by *original* on a *wager*, whether Sir H. Harbord, bart. would be called to the house of peers.

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119. Declaration in the county court of Lancaster by *justices*, for two pounds two shillings won on a *bet* of bowls of two to one, play or pay; conclusion.

344. Declaration by winner against loser, for money won at a game of cards called whist.

345. Declaration in C. B. by winner against loser, for nine pounds nineteen shillings and sixpence lost at cards; with the cases.

346. Declaration for money won on a bet at a horse-race.

530. Declaration, where plaintiff, with several other persons, agreed to subscribe one hundred guineas each, to be run for by fillies or colts, half forfeit, one to be named by each subscriber; defendant, in consideration the plaintiff would permit him to name one for him, and take the winnings, promised to stand to the losing; the defendant named a filly, but drew her, whereby he became liable to pay the forfeit, but not paying it, plaintiff was obliged to do it; with an opinion as to the legality of this contract.

Declaration for a *wager*, that the owner of a house wherein plaintiff dwelt had promised the defendant's wife the refusal or first offer of buying the same,

Declaration on a *wager* concerning the weight of hogs. 2d Count, upon a *wager* concerning the weight of some hogs, plaintiff's mare against defendant's and four guineas,

In consideration plaintiff had paid five guineas, defendant promised to pay plaintiff twenty pounds if he married in six months, and one hundred pounds if he never married,

Declaration in special *assumpsit* for a *wager* won on a marriage. 1st Count, fifty guineas to fifty, of which one was deposited on either side, that plaintiff would marry in a quarter of a year. 2d Count, upon a *wager* of fifty guineas to ninety. 3d Count same as first, that plaintiff would marry in twelve months,

Declaration on a promise to pay money on a *wager*,

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Ibid. 143

Ibid. 216

Ibid. 168

Declaration; in consideration of five shillings deposited by the plaintiff to the use of defendant in the cock-pit, where two cocks were fighting, defendant undertook to pay plaintiff ten pounds if such a cock beat another, *Wi. Ent.* 98.

On a *wager* concerning weighing cloth, *Ibid.* 110.

On a *wager* between plaintiff and defendant, whether or not the shop-door of a person was not shut, so that plaintiff, a bailiff, could not enter to execute a warrant delivered to him to attach the goods by process out of a county court where the plaint was levied, 2. *Brown.* 1.

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On a wager about performing a journey on foot ; in consideration plaintiff would deliver to W. eighty shillings to defendant's use, if plaintiff did not perform a journey from his own house to M. in such a day, the defendant undertook to pay plaintiffs nineteen pounds fifteen shillings upon his return, if he did perform it, *Ro. Ent.* 39. On a horse-race, 2. *Mod. Intr.* 49. *Herne*, 176. On a shooting match, *Ra. Ent.* 63. *Herne*, 176.

On a wager to carry seven quarters of barley in a cart with horses from the top to the bottom of a hill before such a day, or pay plaintiff eight pounds ; defendant paid two shillings and sixpence, and undertook to make it up eight pounds if plaintiff should carry, &c. *Bro. Red.* 29.

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- 123. *Feigned issue* in C. B. between the corporation of Poole and an householder within the borough, respecting his right of common in the corporation lands, *vel non*.
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- 132, 133. action ; plea ; *venire facias* ; *postea*.
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- 136. of freehold and leasehold estates ; plea thereto.
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483. Declaration in B. R. for not accounting for the profit of plaintiff's farm, which plaintiff entrusted to his care, &c. according to promise, but rendering a false account.

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In consideration that plaintiffs would retain defendant for their factor, to sell slaves and divers commodities at Virginia, he promised to give a just account of the profits of the voyage, &c. *Brown's Va. Me.* 70.

In consideration that plaintiff should pay to defendant several pieces of hammered silver money, being the coin of this realm, amounting in number and *value* to three hundred pounds, he promised to pay plaintiff three hundred pounds in new milled silver English money, and four pounds ten shillings for every one hundred pounds for interest, or as a consideration, at the end of eight months. This is not usury; and judgment for plaintiff, 1. *Lut.* 271.

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195. Declaration for *not taking back* an unsound horse, and *repaying* the purchase money, according to agreement.

219. Declaration by original, not paying back part of an apprentice or clerk's fee, agreed to be returned in case apprentice did not continue such a term with the master to whom he had been assigned.

507. Declaration in C. B. ; plaintiff had paid forty pounds with her son as an apprentice (clerk), assigned over by another master (an *attorney*) to defendant (an *attorney*) ; he promised to *return her twenty pounds* in case her son did not stay with him three years ; her son did not stay, and defendant refused, &c. (*See Assumpsit to Serve and Employ, and against Attornies, &c. ante.*)

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5. Declaration *by original* ; plaintiff bought three horses of defendant, who promised, upon their not being liked after a reasonable trial, to *take them back* and *repay* plaintiff the money he gave for them, deducting one guinea therefrom ; plaintiff returned one horse, and defendant refused to repay.

56. Declaration in B. R. on a special agreement ; defendant being indebted to plaintiff in two hundred and ninety pounds, settled accounts, and agreed to give his note for one hundred pounds ; and defendant being possessed of part of a ship, another one hundred pounds was to remain on the ship, and plaintiff was to run risk, and the money to continue as lent on bottom-ree, and defendant to allow plaintiff fifteen pounds *per cent.* for that one hundred pounds, and to *repay* all money paid by plaintiff in insurance.

41. Declaration at the suit of administrator *de bonis non*, on a special promise to return insurance money, if restitution should be made by the Spaniards, who had taken the ship.

In consideration plaintiff had paid forty pounds with her son to defendant as an apprentice, assigned over by another master, defendant promised to return plaintiff twenty pounds of the money, in case her son did not stay with him three years ; plaintiff's son did not stay with him that time, and defendant refused to return the twenty pounds, *S. P. Plead. Aff. 142.*

In consideration plaintiff had lent defendant's testator seventy pounds, testator promised either to make plaintiff a mortgage, or repay him the money, but did neither,

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Pl. Aff. 140
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In consideration that plaintiff would pay defendant twenty pounds, defendant undertook to pay the same to one S. to plaintiff's use, 1. *Brown's Ent.* 11.

In consideration that plaintiff, at the special instance of defendant, would pay him fifty pounds, defendant undertook to pay the money to W. to the use of L. 2. *Brown's Ent.* 5.

Assumpsit to repay plaintiff, or his order, upon demand, with interest, one hundred pounds received and borrowed of plaintiff; *indebitatus assumpsit* for the same, *Brown's Meth.* 31.

Plaintiff, by his attorney, delivered to defendant money, who promised that J. should pay to A. plaintiff's attorney, foreign money, and if J. should not pay, then defendant would pay English money with expences, *Raft. Ent.* 10.

In consideration plaintiff would buy coals for use of defendant, undertook to repay as much as plaintiff should pay for them, *Brownl. Red.* 85.

Plaintiff paid to defendant twenty pounds on condition he would marry S. S. within the year, then to keep it; if not, to repay it on request, *Raft. Ent.* 10.

Assumpsit by vicar, who sold plaintiff his small tithes for five years for twenty-two pounds, that if he did not continue so long, that vicar would repay plaintiff four pounds ten shillings for every year, *Brown. Red.* 39.

In consideration plaintiff would pay to defendant all sums which defendant, as his attorney, should expend in the prosecution of W. at the suit of plaintiff, on a bond and fees, defendant undertook, if he did not recover the sum, in writing, to pay the same to plaintiff out of his own money, *Robins. Ent.* 35.

2. TO INDEMNIFY. (*See Indemnity, ante.*) (39)

3. TO MARRY. (*See Marriage, ante.*) (40)

4. TO SERVE and EMPLOY. (*See Services, &c. ante.*) (41)

5. TO PERFORM WORKS and RENDER SERVICES. (*See Services, &c. ante.*) (42)

Respecting SECURITIES. (43)

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547. Declaration in B. R. by the assignees of bankrupts against an attorney, who had undertaken, in consideration that plaintiffs would deliver to one Sir T. W. D. certain annuity bonds, and other securities, which had been placed in the hands of the bankrupts by Sir T. W. D. as a security for a debt of five thousand pounds, due from him to them, that the said Sir T. W. D. should either pay the debt, or redeliver the securities to the plaintiff, who did neither.

511. Declaration in B. R. against administratrix; in consideration that testator would purchase an annuity, and had

512. accepted and taken a security for the payment, defend-

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- ant undertook to guarantee such payment, on condition that plaintiff would permit him to sue in his name.
284. Declaration; in consideration plaintiff would deliver up certain writings detained by plaintiff as a *security* to B. who was indebted to plaintiff; defendant promised to pay the debt. (*See Bailces for various Purposes, ante.*)
546. Declaration by original against *executor*; in consideration plaintiff had lent defendant's testator seventy pounds, testator promised either to *make a mortgage* to plaintiff, or to pay him the money.
550. Declaration against assignees of a bankrupt, on an agreement with plaintiff, one of bankrupt's creditors, to pay plaintiff so much in the pound upon his demand, out of money to be recovered against a debtor to bankrupt, in consideration of plaintiff's giving up a deed by which bankrupt had assigned the debt to plaintiff. Several Counts.

On EQUITABLE and MORAL OBLIGATIONS, and on CONSIDERATIONS NOT CLASSED, OR reducible to any of the foregoing Heads. (*See Forbearance, and Assumpsit in Default of a Third Person, ante.*) (44)

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416. Declaration against the agent of the purchaser of an estate, who attended him to pay for it, and the purchaser paid part in Money post bills, which plaintiff accepted, on defendant's promise, that if they were not duly paid he would make them cash: breach, that they were dishonoured, but defendant refused to take them up.
418. 2d Count states, that the defendant himself gave the bills in part payment to plaintiff. 3d, that they were returned dishonoured to defendant, who promised to pay principal, and interest till paid, in consideration of *forbearance*. (*See Forbearance, ante.*)
432. Declaration in C. B.; in consideration that plaintiff, who was a *constable* of the parish, would *forbear* to offer himself to contract for conveying vagabonds, &c. under 17. Geo. 2 c. 5. s. 16. defendant, who was also a constable, undertook to allow plaintiff twenty pounds *per annum* if he had the contract.
454. Count; in consideration that plaintiffs had made and given their note to defendants, they promised to provide money for the payment of it when it became due: note was negotiated, but defendants did not provide, &c. for the payment of it, *per quod* plaintiffs was obliged to pay.

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1. Declaration in B. R. for money promised as an apprentice-fee.

2. Declaration for not paying plaintiff the drawback on cyder.

3. 4. 5. 6. Declaration in B. R. on a special agreement ; defendant being indebted to plaintiff in two hundred and ninety pounds settled accounts, and agreed to give his note for one hundred pounds ; and defendant being possessed of a ship, another one hundred pounds was to remain on the ship, and plaintiff was to run the risque, and the money to continue as lent on the bottomree, and defendant to allow plaintiff fifteen pounds *per cent.* for that one hundred pounds, and to *repay* all money paid by plaintiff in insurance.

6. Declaration in B. R. for not paying plaintiff half the expence of a party-wall between their houses, by putting in rafters, beams, and other timbers.

8. Declaration *in the palace court* ; plaintiff let his boat to *bire* to defendant to bring some mahogany which was on board a ship run on shore ; defendant told plaintiff that the said mahogany could be legally brought on shore ; but defendant not having procured the certificate for its being landed, the mahogany and boat were seized, &c.

11. Declaration in B. R. for not fulfilling his agreement with respect to the paying his share of the expences of a certain action which had been brought by one A. B. against plaintiff, which the defendant, with several other persons, agreed should be defended, and the expences paid in proportion to their shares in a marsh.

14. Declaration in B. R. against the principal coal-meters of London, for not sending the deputy coal-meters on board ships which were arrived in the port of L. with coals, by which they were detained for a long time. (This is in Tort.)

15. Declaration by original against plaintiff, for not fulfilling an agreement whereby he was to give up his trade of a pawnbroker to defendant, on defendant's paying for the stock in trade.

17. Declaration against the grandfather of an orphan, which he put apprentice to the plaintiff as a milliner, and stipulated to bind her by indenture for three years, and to give a fee, in consideration of plaintiff's maintaining her and teaching her the business : breach, that the defendant took the apprentice away at the end of one year, and refused to bind her by indenture or to pay the fee, by which the plaintiff lost the orphan's services, and also the chance of another apprentice, with the fee ;

20. with opinion when to declare generally and when specially.

21. Declaration *by original* against a broker, for not making an entry of some coffee imported with the proper officer of excise, and not landing the same to be put in warehouses, as directed by statute, *per quod* the coffee was seized.

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23. Declaration in B. R. by the churchwardens and overseers of a parish against defendant, for permitting one J. D. who had been apprehended by a justice's warrant for a bastard-child, to escape out of his custody, contrary to his promise to bring him before the justice, in consideration of plaintiffs permitting him to take charge of the person apprehended; and opinion.
25. Declaration in B. R. by three persons, who with a fourth, since deceased, had been overseers of the poor, against defendant, who was employed by them to take care of the poor, for embezzling goods and provisions. (Misfeasance.)
28. Declaration in *assumpsit* for a reward promised by an advertisement for procuring defendant's servant, who had absconded with a large sum of money, to be apprehended.
30. Declaration against an *executor*, for a reward advertised for discovering a servant of his testator, who had robbed her master.
31. Declaration by *churchwardens* and overseers of the poor of one parish against those of another, upon an order of justices for the maintenance of a bastard-child born in the last parish, but removed with his mother to the first for nurture.
34. Declaration in special *assumpsit* on a charter-party of affreightment.
37. Special *assumpsit*; in consideration that plaintiff would put his horse at livery with defendant, he undertook to deliver it when plaintiff should want it.
38. Declaration in special *assumpsit* for the penalty in an agreement to place defendant's son with plaintiff, an *attorney*, as an articulated clerk, for not paying the fee; *demurrer* to the first Count.
41. Declaration at the suit of an *administrator de bonis non*, on a special promise to return insurance money, if restitution should be made by the Spaniards, who had taken the ship.
43. Declaration in C. B. at the suit of the *Guardians of the Poor* against a *surveyor*, on a contract to design a plan for a workhouse erected by act of parliament, superintend the buildings, inspect the workmen's bills, &c.: breach, for allowing workmen more than he ought.
45. 2d Count, on a promise to the Guardians of the Poor, at the request of the defendant to permit and suffer him to survey, &c. preparatory to payment of the bills.
46. Declaration at the suit of an *administrator* (to whom administration was granted as the *attorney* of the next of kin residing out of the kingdom) against defendant, who had given the intestate promissory notes to pay one thousand one hundred guineas when he should be worth five thousand pounds, in consideration of five guineas in hand; and in consideration of other five

guineas

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guineas in hand to pay fifteen guineas when he should marry; both events happening in the testator's lifetime.

48. Declaration against a *master of a ship*, for not proceeding to sail to take a load of cod-fish to Scotland, whereby fish became putrid.

50. Declaration, where one J. G. having put his horse to stand at livery-stables, let the horse stay so long that he was indebted to plaintiff in a large sum of money for keeping the horse; and J. G. selling horse to defendant, gave plaintiff orders to let defendant have the horse when he sent for him, and told the plaintiff that defendant would pay what money was due for the keep; defendant soon after sent a message for the horse and plaintiff's bill, and promised to pay plaintiff the money due if he would send said horse and his bill, but now refuses to pay plaintiff the debt.

Declaration in *assumpsit* by a sheriff's officer against a third person, who undertook either to put in good bail or surrender the body of a person in custody at the return of the writ,

1. T. R. 418

Declaration in *assumpsit*, by assignees of a bankrupt, to recover stock which had been illegally transferred by bankrupt to defendant. 2d Count, on a promise to retransfer,

5. Burr. 1593

Declaration, non-payment of money for *depastring* defendant's cattle for four months, according to agreement,

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Declaration in *assumpsit*; defendant, heir at law to plaintiff, in consideration his elder brother, who was sick, would not convey lands to his younger brother, promised to pay him twenty pounds.

2. R. P. C. B. 725

Declaration in C. B. on a special agreement to pay plaintiff so much money if plaintiff would permit defendant to take certain tithes,

1. Mod. Ent. 179

Declaration on a special agreement; in consideration of one hundred pounds advanced to defendant when in indigent circumstances, he promised to pay one hundred and fifty pounds when he was worth two thousand pounds,

Mor. Pr. 139

Declaration in the exchequer; defendant was agent to a company, and gave a note to H. to entitle him to thirty-four shillings from the said company, who gave the note to plaintiff for a debt he owed him, and defendant promised plaintiff if he would keep the note till such a time he would exchange it for money. 2d Count, on a promise to cash the note if plaintiff should then have the custody of it,

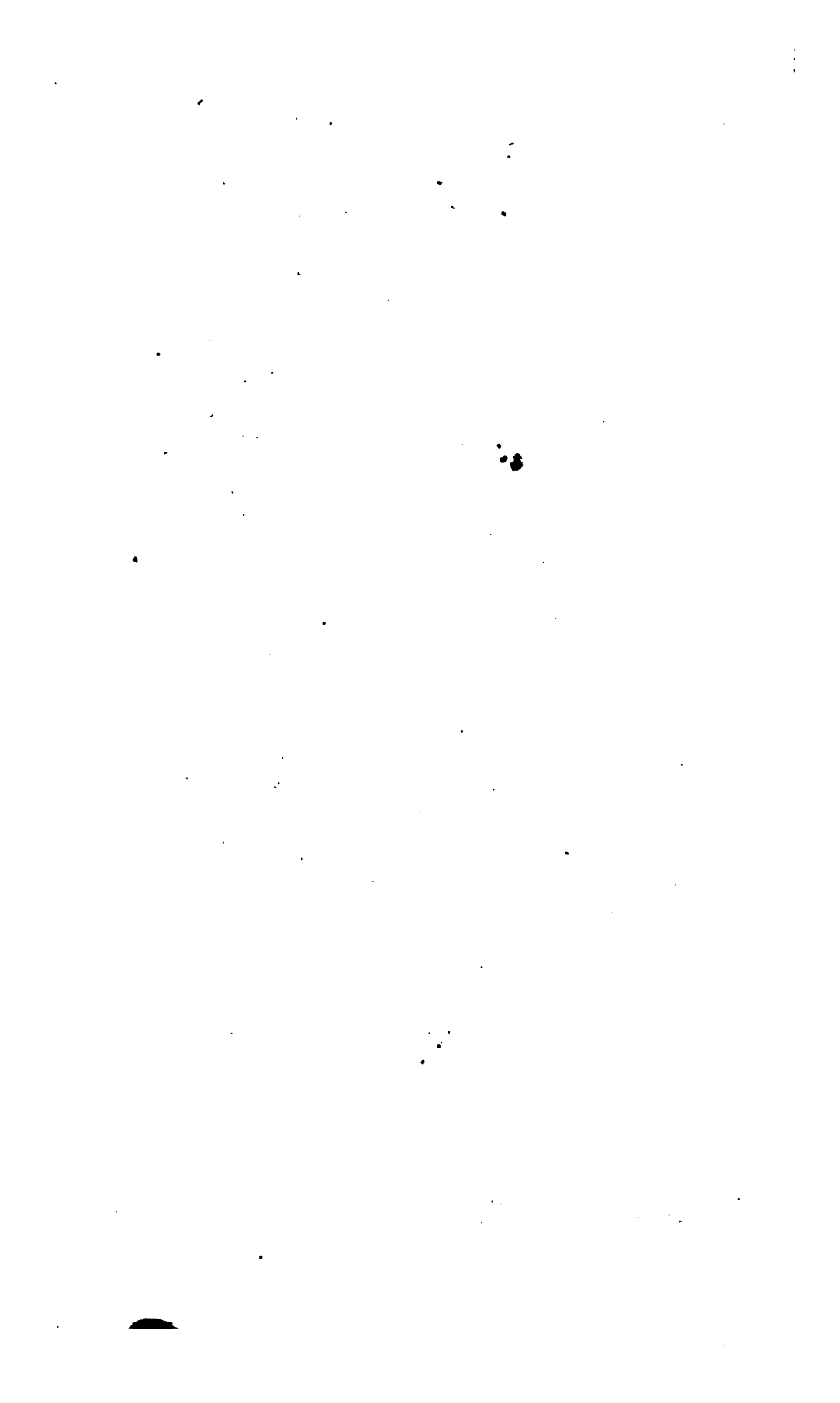
Pl. Aff. 133

Submission to an award of a title to copyhold lands; and defendant, in consideration of the submission, and sixpence paid, and plaintiff's promise to perform, undertook, &c. that if he did not perform on his part, that he would pay plaintiff one hundred pounds, *Co. Entr.* 3.

In consideration plaintiff would permit defendant to carry wood out of plaintiff's close, defendant undertook to pay so much damage as plaintiff should sustain for carrying the wood, *1. Brown.* 36.

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